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The Police (Northern Ireland) Bill

Bill 125 of 1999-2000

The Independent Commission on Policing for Northern Ireland, chaired by Chris Patten, was established under the terms of the *Belfast Agreement* (the Good Friday Agreement) to bring forward proposals which would produce a police service capable of attracting and sustaining support from across Northern Ireland as a whole. The Commission's report was published in September 1999. The *Police (Northern Ireland) Bill*, is designed to implement the recommendations in the Commission's report which the Government has accepted following consultation and which require legislation. The Bill is due to be considered on second reading in the House of Commons on Tuesday 6 June. This paper sets out the background to the Bill and discusses some of its provisions.

Mary Baber

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Summary of main points

The *Police (Northern Ireland) Bill*, which is due to be considered on second reading in the House of Commons on Tuesday 6 June, is designed to implement the recommendations of the Independent Commission on Policing for Northern Ireland, chaired by Chris Patten.

This paper summarises the current structure of policing in the principal jurisdictions of the UK. It goes on to set out policing responsibilities in Northern Ireland, including a brief history of the Royal Ulster Constabulary (RUC).

The next part of the paper contains an overview of the Belfast Agreement (the Good Friday Agreement) in April 1998 and arrangements to establish devolved government in Northern Ireland. The Belfast Agreement also provided for the establishment of an independent commission to consider policing arrangements for Northern Ireland. A commission was duly established under the chairmanship of Chris Patten. The commission reported in September 1999. The paper sets out some of the report's observations on policing in Northern Ireland and goes on to describe the political developments which followed its publication. After a period of consultation the Secretary of State announced the Government's decisions on the Patten report on 19 January 2000. There was a debate on the Patten report in the House of Commons on 6 April 2000. The devolved government in Northern Ireland was suspended in February 2000 following problems with the decommissioning of weapons. It was subsequently restored on 30 May 2000.

The paper then goes on to consider the provisions of the *Police (Northern Ireland) Bill*, which was published on 16 May 2000. The bill seeks to:

- provide for a Northern Ireland Policing Board to hold the police service to account in place of the Police Authority for Northern Ireland
- require district councils to establish district policing partnerships to perform a consultative and monitoring role
- amend the police planning process and introduce arrangements to improve police efficiency and effectiveness
- introduce a new declaration for new recruits and a code of ethics
- enable the Secretary of State to regulate the flags and emblems of the police service and make an order concerning the name of the police service
- provide for severance arrangements for officers in the force, which is to be reduced in size
- enable recruiting arrangements for the police to be contracted out
- enable special temporary recruitment measures to be introduced to increase the proportion of Catholics in the police service.

The paper concludes by setting out some comment on the Bill's provisions.

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I Policing in Northern Ireland

A. The structure of policing in the UK

Policing in each of the principal jurisdictions within the UK is governed by a tripartite structure involving government ministers, police authorities and chief constables of individual police forces.

In England and Wales, where there are 43 police forces, police forces are maintained by local police authorities. The police authorities for each of the 41 police areas outside London normally have 17 members, of whom 9 are people who have been elected as local councillors, 3 magistrates and 5 independent members.¹ Where London is concerned, the Home Secretary is currently the police authority for the Metropolitan Police District but this will change when the Metropolitan Police Authority provided for in Part VI of the *Greater London Authority Act 1999* comes into being in July 2000. Within the City of London Police area, the police authority is the Common Council of the Corporation of London.

In Scotland, where there are 8 separate police forces, all members of local police authorities are people who have been elected as local councillors.

In Northern Ireland the Secretary of State for Northern Ireland appoints the members of the Police Authority for Northern Ireland, who must be representative of the community in Northern Ireland.

B. Responsibilities for policing in Northern Ireland

The statutory provisions governing the structure of policing in Northern Ireland were most recently amended by the *Police (Northern Ireland) Act 1998*. The Act was intended to establish “a more efficient, effective, accountable and acceptable police service in Northern Ireland”² by extending to Northern Ireland what the Northern Ireland minister, Adam Ingram, described as the benefits of the improved system of police governance introduced to England, Wales and Scotland by the *Police and Magistrates Courts Act 1994*.³

Under the 1998 Act the Secretary of State is responsible for setting key policing objectives and issuing a statement of policing principles. In addition he provides the

¹ Provisions concerning police authorities set out in the *Police Act 1964* were amended by the *Police and Magistrates' Courts Act 1994* and are now to be found in Part 1 and Schedule 1 of the *Police Act 1996*

² A More Efficient, Effective, Accountable and Acceptable Police Service – Northern Ireland Office (NIO) Press Notice 7.5.1998

³ HC Standing Committee B Tuesday 10 February 1998

annual police grant, approves the appointment of senior RUC officers and makes regulations setting out the terms and conditions of service of police officers. He also appoints the members of the Police Authority, who are required to be representative of the community in Northern Ireland. He has powers to issue guidance and codes of practice to the Police Authority and the RUC and appoint inspectors of constabulary for the purpose of inspecting the police.

The Police Authority is responsible for holding the police to account and for monitoring and evaluating the service provided by the police. The Authority's role includes securing the maintenance of the police force and ensuring the efficiency and effectiveness of the police. The Authority is involved in consulting the community and representing its views to the police and has powers to set objectives and performance targets for inclusion in the annual policing plan drafted by the Chief Constable. The Authority is also responsible for setting the police budget, employing police support staff, owning police land, buildings and equipment and appointing senior RUC officers. Amongst other things the 1998 Act was intended to improve links between the police and local communities. The Government wanted to ensure that District Councils in Northern Ireland were better informed about policing arrangements throughout Northern Ireland. The Act therefore made provision for District Councils to ask questions of the Police Authority, and for the Authority to send one or more members to District Council meetings.

The Chief Constable is responsible for the operational control and direction of the police. He has managerial responsibility for the staff of the Northern Ireland Police Service and runs the day-to-day management of resources. He is required by the 1998 Act to produce a draft of an annual policing plan, showing how he will police Northern Ireland in the light of the priorities set by the Secretary of State and the Police Authority. The plan must be approved and published by the Police Authority before the beginning of the financial year. The Police Authority must subsequently provide a public assessment of the Chief Constable's performance in carrying out the plan. The Chief Constable is also required to produce a strategic plan setting out policing priorities over a three to five year period. Both the Secretary of State and the Police Authority can call for reports on policing matters from the Chief Constable. Where the Police Authority calls for a report and the Chief Constable takes the view that it would contain information which in the public interest ought not to be disclosed or is not needed for the discharge of the functions of the Police Authority he may have the request for a report referred to the Secretary of State for confirmation as to whether or not it should be carried out.

C. History of the Royal Ulster Constabulary (RUC)

The Report of the Advisory Committee on Police in Northern Ireland (the "Hunt report"), which was submitted to the Government of Northern Ireland and published in October 1969, contains the following brief history of the Royal Ulster Constabulary:

In the interests of efficiency it was decided in the year 1836 to bring together all the constabulary forces then existing in Ireland and to place them under the

control of a single officer with the title of Inspector-General. From that time onwards the country acquired a national force controlled by a single police authority. Local authorities were required to meet one half of the cost of police services but later they were relieved of that responsibility save in special circumstances. The force was called 'The Constabulary of Ireland' but later its title was changed to 'The Royal Irish Constabulary' when Her Majesty, Queen Victoria, honoured it in recognition of good services.

Following the passing of the Government of Ireland Act 1920 and the setting up of a separate Parliament for Northern Ireland, a Departmental Committee of Inquiry was set up by the then Minister of Home Affairs, Sir Dawson Bates, to inquire into the existing police organisation and to report on various matters. The Committee recommended that a new police force be established called the Ulster Constabulary, that the approval of His Majesty the King be sought to the use of the prefix 'Royal' in its title and that no attempt be made to organise the force on a local basis but as one force under a single command for the whole of Northern Ireland. It further recommended a strength not exceeding 3,000, one-third of which was to be recruited from the Roman Catholic faith, preference to be given to Roman Catholic members of the Royal Irish Constabulary and the then Special Constabulary Force.

Under the Constabulary Act (Northern Ireland) 1922, the Royal Ulster Constabulary was established. Section 1 (3) of that Act provides that existing enactments relating to the Royal Irish Constabulary, as modified by the Act of 1922, are applicable to the R.U.C.⁴

The report made the following comments about the role of the RUC:

Like its predecessor the Royal Irish Constabulary, the R.U.C. has had to perform what is in fact a dual role. In addition to carrying out all those duties normally associated in the public mind with police forces elsewhere in the United Kingdom, it is responsible for security duties of a military nature.⁵

In a chapter proposing changes in the role and organisation of the RUC the Hunt report said:

The most striking difference between the Royal Ulster Constabulary and the police forces elsewhere in the United Kingdom is that it fulfils a military as well as a civilian role. The traditional duties of the mainland are the prevention and detection of crime, the control of traffic and the maintenance of public order. In Northern Ireland the military role has understandably been regarded as of first importance, and has played a significant part in the training, equipment and traditions of the force. The impression of a military force is strengthened by the close association of the force with the Ulster Special Constabulary which, at least in the rural areas of the Province, is almost wholly devoted to security duties of a military kind.

⁴ *Report of the Advisory Committee on Police in Northern Ireland* (the "Hunt report") Cmd 535 Government of Northern Ireland (October 1969) paragraphs 29-31.

⁵ *ibid.* paragraph 33

Policing in a free society depends on a wide measure of public approval and consent. This has never been obtained in the long term by military or para-military means. We believe that any police force, military in appearance and equipment, is less acceptable to minority and moderate opinion than if it is clearly civilian in character, particularly now that better education and improved communications have spread awareness of the rights of civilians. We accept that, in view of the threat to security discussed in Chapter 2, there is, and may remain for some time, a continuing need to guard against the incidence of armed guerrilla-type attacks or incursions of the type which have occurred in the past. We consider that this is a task which, by its nature and under the Constitution, should be the responsibility of the Government at Westminster. We discuss this matter in Chapters 9 and 10.

We therefore recommend that the R.U.C. be relieved of all duties of a military nature as soon as possible and that its contribution to the security of the State from subversion be limited to the gathering of intelligence, the protection of important persons and the enforcement of the relevant laws.

On the basis of this recommendation, it becomes necessary to consider measures likely to improve the acceptability and effectiveness of the R.U.C. in its new role as a civil police force. These measures include a change in the relationship between the force and the Central Government, and reviews of organisation and authorised establishment, of equipment, manpower, accommodation and of the policy governing the use of firearms.⁶

Following the publication of the Hunt report the Police Authority for Northern Ireland was created by the *Police Act (Northern Ireland) 1970*. In its submission to the Independent Commission on Policing (the Patten Commission) in December 1998, the Police Authority for Northern Ireland described events before and after the establishment of the Hunt committee in the following terms:

The outbreak of the most recent "troubles" in 1968 was a watershed for the RUC. The scale of the public disorder which followed the Civil Rights campaign was such that the RUC, seriously under strength and suffering heavy casualties, was unable to cope. The RUC's image was severely tarnished by the way it reacted to this disorder and in August 1969 the Army was deployed to assist the police.

In 1969 the Advisory Committee on Police in Northern Ireland (known as the Hunt Committee after its chair Lord Hunt) was appointed in the wake of the civil disturbances to conduct a review of policing. The Committee, under considerable pressure, completed its report in around six weeks (Hunt Report, 1969).

In principle the RUC was to become an unarmed force and adopt the rank and command structure of other British police forces. The Special Constabulary was disbanded and in 1970 the Police Act (NI) established the Police Authority for

⁶ *ibid.* paragraphs 80-83

Northern Ireland. The Authority was to be a body of nominated individuals representing all sections of the community. An elective body was considered but rejected as being impractical at the time.

The 1970 Act laid down the Authority's statutory duty as being to "secure the maintenance of an adequate and efficient police force". The Chief Constable was to be responsible for the direction and control of the force.

Unfortunately the implementation of the Hunt Committee's recommendations did not bring about the hoped for improvement in police acceptability across all sections of the community. Terrorists took advantage of the disarming of the RUC and an increasingly vicious campaign was waged against its officers. As a result the RUC was quickly re-armed.

The introduction of internment in 1971 further damaged the credibility and acceptability of the RUC. It made the Force less acceptable in certain nationalist areas, and the increased violence that followed gave credibility to the view that the Hunt report had been simplistic and naive. The RUC's Special Branch was criticised in the wake of the introduction of internment for being out of touch and ineffective, and for this and other reasons the Army assumed the dominant security role.

In the aftermath of internment the British Government was concerned that law enforcement in Northern Ireland should not be seen internationally to be in violation of basic human rights. The Government faced the conflicting needs of on the one hand being seen to be protecting civil liberties and on the other being able to counter and contain political violence without recourse to unduly repressive measures (Brewer et al, 1988). Increasingly, it was recognised that the Army's involvement in countering internal conflict was counter-productive because its use conferred legitimacy on the various paramilitary groups who sought to portray the conflict as a "war".

From 1976 onwards the Government sought to counter this by implementing a policy of "police primacy" whereby the RUC was to assume the dominant security role, assisted by the Army. Since then the RUC has taken the lead in the fight against terrorism supported where necessary by the Army.

However while this policy yielded many strategic advantages for the Government, it created a major drawback for the RUC in that it had to develop a counter-insurgency capability in the form of specialist units trained and equipped along military lines. As a result the Hunt Report aim of civilianising the police force suffered a major setback in that the RUC, in order to protect themselves from increasingly deadly attack, became characterised in the public mind by flak jackets, automatic weapons, armoured vehicles and fortress-like police stations.

Though police use of their weaponry was comparatively rare, in this environment the police came to be seen by many as the defenders of the state rather than the servants of the community - a perception which has made it difficult for the police to be accepted in areas traditionally hostile to the Northern Ireland state. The size and cost of the police service also grew considerably to cope with the

increasing level of violence and the added responsibilities imposed by the policy of police primacy.⁷

II The Belfast Agreement and Devolution: An Overview

The *Belfast Agreement*⁸ reached at the multi-party talks on Northern Ireland in April 1998 provided for new institutions and constitutional change to occur simultaneously as follows.

- new legislation by both the UK and Irish governments
- a new Northern Ireland Assembly
- a new North/South Ministerial Council
- a new British-Irish Council to bring together representatives from devolved administrations and the two governments, as well as the Isle of Man and Channel Isles
- a new British-Irish Agreement to replace the 1985 *Anglo-Irish Agreement*
- a process for decommissioning weapons held by paramilitary groups
- a programme for the accelerated release of paramilitary prisoners.
- the creation of a Northern Ireland Human Rights Commission and an Equality Commission
- an independent commission to make recommendations for future policing arrangements in Northern Ireland
- a review of criminal justice

Background information on the Belfast Agreement and details about its implementation, including the establishment of the Northern Ireland Executive and the Northern Ireland Assembly, are set out in the following Library Research Papers:

98/57 *Northern Ireland: Political Developments since 1972*;

98/76 *The Northern Ireland Bill: Implementing the Belfast Agreement*;

00/6 *Disqualification Bill (Bill 41 of 1999-2000)*;

00/13 *Northern Ireland Bill (Bill 61 of 1999-2000)*.

Devolution to the Northern Ireland Assembly and Executive took place on 2 December 1999.

The failure of decommissioning to occur led the Secretary of State for Northern Ireland, Peter Mandelson, to introduce the *Northern Ireland Act 2000* which, amongst other things, made arrangements for the suspension of the Assembly and Executive. The Act came into effect on 11 February 2000 when Mr Mandelson brought it into force by order.

⁷ *Policing: A New Beginning: a submission by the Police Authority for Northern Ireland to the Independent Commission on Policing* December 1998 paragraphs 2.1-2.14

⁸ *The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland* Cm 3883 April 1998 www.nio.gov.uk/agreement.htm

The British and Irish Governments subsequently embarked on new initiatives aimed at restoring devolution and on 5 May 2000 the Prime Minister, Tony Blair, and the Taoiseach, Bertie Ahern, communicated to the political parties an account of the remaining steps needed to secure the full implementation of the Belfast Agreement.⁹ They also called on the paramilitaries to state clearly that they would put their arms beyond use. Later that day the IRA made a statement saying that in the context of the two governments implementing what they had agreed it would initiate a process that would “completely and verifiably put IRA arms beyond use”.¹⁰ On 8 May Mr Mandelson made a statement to the House in which he commented on the work of the two governments to restore devolution.¹¹

On 12 February the Ulster Unionist Party’s Council had passed a resolution which, amongst other things, said:

In the event of any proposal by the Secretary of State to revoke the suspension of the Assembly and Executive, before any UUP participation the Leader will make a further report to this Council.¹²

The Ulster Unionist Council met on 27 May 2000 to consider its reaction to the IRA proposals. Delegates voted by a majority of 459 to 403 in favour of a return to devolved government, backing a motion supported by the party leader, David Trimble.¹³ The Secretary of State for Northern Ireland, Peter Mandelson, subsequently signed an order restoring power over devolved matters to the power-sharing Northern Ireland Executive from 00.00 a.m. on 30 May 2000.¹⁴

More detailed information on the current state of the devolution process in Northern Ireland can be found in a standard briefing from the Parliament and Constitution Centre.

The establishment, organisation and control of the Royal Ulster Constabulary and of any other police force (other than the Ministry of Defence Police), is a reserved matter under Schedule 3 of the *Northern Ireland Act 1998*, as are the prevention and detection of crime and the maintenance of public order. The Secretary of State will still therefore be responsible to Parliament for these matters.

⁹ DEP 00/792

¹⁰ *ibid.*

¹¹ HC Deb 8 May 2000 c501-503

¹² <http://www.uup.org/current/uuc1202.html>

¹³ “Unionists back power-sharing” – *BBC Online* 27.5.2000

¹⁴ “Devolution returns to Northern Ireland” – *BBC Online* 30.5.2000

III The Patten Commission and its aftermath

The section of the Belfast Agreement entitled “Policing and Justice” stated that:

The participants recognise that policing is a central issue in any society. They equally recognise that Northern Ireland’s history of deep divisions has made it highly emotive, with great hurt suffered and sacrifices made by many individuals and their families, including those in the RUC and other public servants. They believe that the agreement provides the opportunity for a new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole. They also believe that this agreement offers a unique opportunity to bring about a new political dispensation which will recognise the full and equal legitimacy and worth of the identities, senses of allegiance and ethos of all sections of the community in Northern Ireland. They consider that this opportunity should inform and underpin the development of a police service representative in terms of the make-up of the community as a whole and which, in a peaceful environment, should be routinely unarmed.

The participants believe it essential that policing structures and arrangements are such that the police service is professional, effective and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves; representative of the society it polices, and operates within a coherent and co-operative criminal justice system, which conforms with human rights norms. The participants also believe that those structures and arrangements must be capable of maintaining law and order including responding effectively to crime and to any terrorist threat and to public order problems. A police service which cannot do so will fail to win public confidence and acceptance. They believe that any such structures and arrangements should be capable of delivering a policing service, in constructive and inclusive partnerships with the community at all levels, and with the maximum delegation of authority and responsibility, consistent with the foregoing principles. These arrangements should be based on principles of protection of human rights and professional integrity and should be unambiguously accepted and actively supported by the entire community.

An independent Commission will be established to make recommendations for future policing arrangements in Northern Ireland including means of encouraging widespread community support for these arrangements within the agreed framework of principles reflected in the paragraphs above and in accordance with the terms of reference at Annex A. The Commission will be broadly representative with expert and international representation among its membership and will be asked to consult widely and to report no later than Summer 1999.¹⁵

¹⁵ Cm 3883 April 1998 p.22 www.nio.gov.uk/agreement.htm

The Agreement added that implementation of the recommendation arising from the review would be discussed with the political parties and with the Irish Government. It went on to say:

The participants also note that the British Government remains ready in principle, with the broad support of the political parties, and after consultation, as appropriate, with the Irish Government, in the context of ongoing implementation of the relevant recommendations, to devolve responsibility for policing and justice issues.¹⁶

The Agreement set out the terms of reference for the independent Commission on policing for Northern Ireland as follows:

Taking account of the principles on policing as set out in the agreement, the Commission will inquire into policing in Northern Ireland and, on the basis of its findings, bring forward proposals for future policing structures and arrangements, including means of encouraging widespread community support for those arrangements.

Its proposals on policing should be designed to ensure that policing arrangements, including composition, recruitment, training, culture, ethos and symbols, are such that in a new approach Northern Ireland has a police service that can enjoy widespread support from, and is seen as an integral part of, the community as a whole.

Its proposals should include recommendations covering any issues such as re-training, job placement and educational and professional development required in the transition to policing in a peaceful society.

Its proposals should also be designed to ensure that:

- the police service is structured, managed and resourced so that it can be effective in discharging its full range of functions (including proposals on any necessary arrangements for the transition to policing in a normal peaceful society);
- the police service is delivered in constructive and inclusive partnerships with the community at all levels with the maximum delegation of authority and responsibility;
- the legislative and constitutional framework requires the impartial discharge of policing functions and conforms with internationally accepted norms in relation to policing standards;
- the police operate within a clear framework of accountability to the law and the community they serve, so:
 - they are constrained by, accountable to and act only within the law;
 - their powers and procedures, like the law they enforce, are clearly established and publicly available;

¹⁶ *ibid.* p.23

- there are open, accessible and independent means of investigating and adjudicating upon complaints against the police;
 - there are clearly established arrangements enabling local people, and their political representatives, to articulate their views and concerns about policing and to establish publicly policing priorities and influence policing policies, subject to safeguards to ensure police impartiality and freedom from partisan political control;
 - there are arrangements for accountability and for the effective, efficient and economic use of resources in achieving policing objectives;
 - there are means to ensure independent professional scrutiny and inspection of the police service to ensure that proper professional standards are maintained;
- the scope for structured co-operation with the Garda Síochána and other police forces is addressed; and
 - the management of public order events which can impose exceptional demands on policing resources is also addressed.

The Commission should focus on policing issues, but if it identifies other aspects of the criminal justice system relevant to its work on policing, including the role of the police in prosecution, then it should draw the attention of the Government to those matters.

The Commission should consult widely, including with non-governmental expert organisations, and through such focus groups as they consider it appropriate to establish.¹⁷

On 3 June 1998 Mo Mowlam, who was then Secretary of State for Northern Ireland, announced the appointment of the seven Members of the independent Commission and the Chairman, Chris Patten.¹⁸

On 8 October 1998 the Government brought some of the provisions of the *Police (Northern Ireland) Act 1998* into force, including the new declaration of office to be taken by RUC constables, the requirement on the Chief Constable to publish an annual policing plan, containing key policing objectives set by the Secretary of State and the Police Authority and an enhanced community consultation role for the Police Authority.

The report of the Commission was published on 9 September 1999.¹⁹ In the introductory chapter of its report the Commission commented that:

As we have just argued, the role of Northern Ireland's police service, and general questions of policing policy and practice, are central to many of the issues

¹⁷ *ibid.* p.23-24

¹⁸ HC Deb 3 June 1998 c216-7W

¹⁹ *A New Beginning: Policing in Northern Ireland: The Report of the Independent Commission on Policing in Northern Ireland* September 1999, www.belfast.org.uk/report.htm

mentioned in the preamble to the Agreement and to many of the more difficult problems affecting its implementation. The reasons for this are primarily political – failure in the past to find an acceptable democratic basis for the governance of Northern Ireland that accommodated the rights and aspirations of both the unionist and nationalist communities. Policing has been contentious, victim and participant in past tragedies, precisely because the polity itself has been contentious. The consent required right across the community in any liberal democracy for effective policing has been absent. In contested space, the role of those charged with keeping the peace has itself been contested. The roots of the problem go back to the very foundation of the state. Since 1922 and the establishment of the Royal Ulster Constabulary (in part drawn from the ranks of the old Royal Irish Constabulary), the composition of the police has been disproportionately Protestant and Unionist. This has become much more pronounced during the last 30 violent years for reasons that we shall examine later. Both in the past, when the police were subject to political control by the Unionist government at Stormont, and more recently in the period of direct rule from Westminster, they have been identified by one section of the population not primarily as upholders of the law but as defenders of the state, and the nature of the state itself has remained the central issue of political argument. This identification of police and state is contrary to policing practice in the rest of the United Kingdom. It has left the police in an unenviable position, lamented by many police officers. In one political language they are the custodians of nationhood. In its rhetorical opposite they are the symbols of oppression. Policing therefore goes right to the heart of the sense of security and identity of both communities and, because of the differences between them, this seriously hampers the effectiveness of the police service in Northern Ireland.²⁰

Noting the principles for policing set out in the section of the Belfast Agreement concerning policing and justice the Commission commented:

These principles have provided the benchmark against which we have tested all our proposals. We have not tried to balance what may be politically acceptable to this group against what is reckoned to be acceptable to that. As one submission to us argued, any proposals “should not be calculated simply as a sop” to a particular interest group. The Methodist Church argued that “the sole criterion should be the improvement of the policing service for the benefit of the whole community”. Again and again, the tests we have applied have been these:

1. Does this proposal promote effective and efficient policing?
2. Will it deliver fair and impartial policing, free from partisan control?
3. Does it provide for accountability, both to the law and to the community?
4. Will it make the police more representative of the society they serve?
5. Does it protect and vindicate the human rights and human dignity of all?

²⁰ *ibid.* paragraph 1.3

These tests are a matter of judgment; they do not constitute a precise science. Naturally, such judgments are conditioned by the politics of the Agreement. Someone who rejected the Agreement might well deny the validity of these tests, indeed of the whole of our work; he or she would certainly be likely to come to different conclusions from us in many, though probably not all instances. But the only way we can work, and would choose to work, is on the basis of trying to apply tests and reach judgments that would seem reasonable to anyone conscientiously committed to the establishment of peace and effective policing.²¹

In referring to the accountability of the police the Commission said:

In a democracy, policing, in order to be effective, must be based on consent across the community. The community recognizes the legitimacy of the policing task, confers authority on police personnel in carrying out their role in policing and actively supports them. Consent is not unconditional, but depends on proper accountability, and the police should be accountable in two senses – the “subordinate or obedient” sense and the “explanatory and cooperative” sense.²²

The Commission went on to say that, in Northern Ireland, accountability had not been achieved in either of the senses described in this paragraph. It went on:

The public have not been able to hold the police accountable through their democratically elected representatives, as should happen in a democratic society, whether the mechanism is an elected mayor or state governor as in the United States, or a Police Authority with a majority elected membership as in Britain. In Northern Ireland, Police Authority members are all appointed by the Secretary of State after selection through open competition; some may also be elected councillors, but it is the Secretary of State, not the electoral process, that appoints them to membership of the Authority. The Secretary of State also has powers to remove members from the Authority. The problem of achieving a representative membership by this means has been exacerbated by the refusal of some key political parties and trades unions to allow their members to be appointed to the Authority.

Moreover, although there is in Northern Ireland a tripartite arrangement which resembles the arrangements in Britain – whereby a Police Authority, the Chief Constable and central government share responsibilities – the arrangement in Northern Ireland does not work as in Britain. A problem in applying the tripartite model to policing in Northern Ireland is the one-to-one relationships: one police force, one police authority and one Secretary of State. In England and Wales, the Home Secretary relates to a large number of police authorities. He is a more remote figure – less interventionist – and chief constables there have to forge a working relationship with their police authorities. In Northern Ireland the Secretary of State is much more directly involved and the security situation has

²¹ *ibid.* paragraph 1.10

²² *ibid.* paragraph 5.2

been a major factor in bringing about a situation in which, in effect, the Chief Constable has been responsible to the Police Authority for what might be called ordinary crime policing and directly to the Secretary of State for security-related policing. Given the proverbial difficulty of serving two masters, it is not surprising if at times chief constables have tended to develop a more direct relationship with the one who appeared more influential.

These arrangements are not a basis for democratic accountability in the sense of the police in Northern Ireland being “subordinate” or responsible to the community of Northern Ireland. The Secretary of State exercises both direct influence over the police, through direct links with the Chief Constable, and also indirect influence through the appointment of Police Authority members. He/she also determines the budget. The Secretary of State, although a democratically elected minister and answerable to Parliament, is never a member of a Northern Ireland political party and therefore never someone elected by the people of Northern Ireland. So, neither through the Police Authority nor through government are the people of Northern Ireland – whether unionists or nationalists – able to hold the police of Northern Ireland to proper democratic account in the “subordinate” sense of the term.

There has long been an anxiety throughout the United Kingdom to prevent the police becoming subject to political direction. The concern that the police should be impartial servants of the community rather than executives of current government policy lies behind the system of autonomous regional police services in Britain and the tripartite system of police governance – chief officer, police authority and central government. These arrangements achieve a distinction between the police and the state.

The anxiety to avoid political direction of the police is strong in Northern Ireland as well. This view was put to us by both communities and by police themselves. Many respondents to our consultation exercise warned against a return to the situation before 1969, when the RUC was in practice subject to direction by the Minister of Home Affairs in the former Unionist government, a state of affairs which many regard as a contributing factor to the outbreak of the Troubles of the past thirty years. Several people also commented unfavourably on the present relationship between the Secretary of State and the RUC, and saw the police as an instrument of British government policy rather than a service meeting local priorities.

The Police Authority’s statutory power to hold the Chief Constable to account has significant deficiencies. Since its inception in 1970 it has had the power to call for reports from the Chief Constable, but the Police Authority itself has pointed out a fundamental problem arising from doubt as to whether the Chief Constable’s obligation to report includes operational matters. The Police (Northern Ireland) Act 1998 provides that if “it appears to the Chief Constable” that such a report is not in the public interest, or necessary for the discharge of the Police Authority’s functions, he may request the Authority to seek a decision from the Secretary of State on whether the report should be provided. Furthermore, the Police Authority’s power to obtain a report, subject to this qualification, is more limited still because it is not supported by a power to follow

up the receipt of the report, if the Authority judges it necessary, for example by undertaking or commissioning inquiries.

The Police (Northern Ireland) Act 1998 contains labyrinthine provisions as to objectives, performance targets and policing plans, and the respective roles of the Secretary of State, the Police Authority and the Chief Constable. We have found these confusing, both in the text and in the oral briefings we have received from government officials (and we are mystified as to why this legislation was put through parliament in the weeks following the establishment of this Commission, given that our terms of reference required us to take a new look at the subject). But what does emerge clearly is that the Police Authority's scope for setting objectives, priorities and targets is, or can be, greatly constrained by the role given to the Secretary of State, who can set objectives (as well as principles) which must be taken into account; who must be consulted by the Police Authority, and by the Chief Constable, at several stages of the planning process; and who appears to be able to give the Chief Constable directions over the head of the Police Authority (see paragraph 6.18).

It is, however, not only the powers of the Police Authority that limit its effectiveness as a mechanism of democratic accountability. There is a perception that, to quote Weitzer, Police Authority members have "strongly pro-police orientations". True or not, the perception is fed by the way in which the Authority sometimes speaks about the police in public, for example defending the police service in relation to allegations of police wrongdoings, before such allegations have been properly investigated.

The Police Authority has also been hampered in its accountability function by having been responsible, until this year, for providing executive services to the police and managing more than three thousand civilian support staff working with the police. The combination of being at once part of the policing service and also required to monitor that service and hold the police to account was seriously flawed. As a result of the Police (Northern Ireland) Act 1998, the civilian staff have now been transferred to the Chief Constable's responsibility (from April 1999), but at the time of writing the complete separation of functions between the Police Authority and the police has not yet been achieved, and the relationship between the two bodies is still in some respects that between executive collaborators rather than one between a service provider and a regulator.²³

The Commission went on to refer to what it considered was insufficient transparency in the arrangements for holding the police to account in Northern Ireland and deficient financial management and scrutiny of the police budget. It also made the following comments about the legal accountability of the police in Northern Ireland:

The police are tasked to uphold and if necessary enforce the law, but, like any citizens, they must at all times act within it. Police officers should have sound

²³ *ibid.* paragraphs 5.5-5.13

knowledge of the law and of their powers under it. They need sufficient discretion to do their jobs well but they need at the same time to be monitored in their adherence to the law, and to have any errors rectified and abuses punished. It is important for the credibility of the police in the communities they serve that all this should not only be the case but that it should also be seen to be the case. The incorporation into law of the European Convention on Human Rights, to the extent that this is effected by the Human Rights Act 1998, should serve to clarify those aspects of the law relating to policing where respect for human rights and human dignity are paramount considerations. Even where, in exceptional and defined circumstances, some derogation from these standards is permissible, these must be prescribed by law and proportional in the circumstances. Procedures to secure compliance with the law and with international human rights standards and norms are thus an important safeguard both to the public and to the police officers carrying out their duties. An efficient and well-regarded system for dealing speedily, effectively, openly and fairly with complaints about the behaviour of police officers protects them from malicious complaints and should reassure and protect the public.

As we noted in Chapter 3, there are sharply different views in Northern Ireland as to whether the police have acted within the law in the past. A clear majority believe that they have, but a significant minority argue that there has been a large degree of abuse. Although we were not a commission of inquiry, and had no powers to investigate specific allegations, we took seriously a number of allegations concerning past police performance, some of which are still under investigation.

Whatever the outcome of these investigations, we are in no doubt that the RUC has had several officers within its ranks over the years who have abused their position. Many supporters of the RUC and both serving and retired officers have spoken to us about “bad apples”. It is not satisfactory to suggest, as some people have, that one should somehow accept that every organisation has such “bad apples”. They should be dealt with.

It is not simply individual officers who have been at fault here. We are not persuaded that the RUC has in the past had adequate systems in place to monitor and, when necessary, act upon complaints against officers and civil claims awards. Most modern service industries put a high premium on dealing quickly and effectively with complaints about customer service. This is a prime responsibility of management. What might be called quality of service complaints about policing should be dealt with speedily and effectively at a local level as informally as possible. The incidence of complaints should be used by management at all levels as an indicator of public satisfaction or otherwise with the service being provided, of the need to make changes and of training requirements. The proposals we make in this report are designed to ensure that this is the case, and to minimise as far as possible any prospect of abuses such as those alleged to have taken place in the past.²⁴

²⁴ *ibid.* paragraphs 5.17-5.20

The report made 175 recommendations, not all of which would require legislation. The main recommendations included:

- A new oath, emphasising the upholding of fundamental human rights and the according of equal respect to all individuals and to their traditions and beliefs.
- The creation of a new Policing Board, to replace the Police Authority, with a majority of Board members being members of the Northern Ireland Assembly. Amongst other things, the Board would have the power to require the Chief Constable to report on any issue concerning the performance of his functions or those of the police service, including operational decisions, with the matter being referred to the Secretary of State in the event of a disagreement over whether it was appropriate for a report to be provided on a particular matter.
- The establishment of a District Policing Partnership Board (DPPB) as a committee of each District Council, with a majority elected membership. The DPPB would hold monthly meetings with the local police District Commander, at which the police would present reports and answer questions and the Board would reflect community concerns and priorities to the police. Views expressed by DPPBs would have to be taken fully into account by the police and the Policing Board in formulating policing plans and strategies at central level.
- New legislation on covert policing which would be compliant with the European Convention on Human Rights (ECHR) and have the same application as in the rest of the UK, the establishment of a commissioner for covert law enforcement in Northern Ireland and a complaints tribunal, consisting of senior lawyers, with full powers to investigate cases involving covert law enforcement operations.
- The introduction of video-recording in PACE custody suites.
- Immediate and substantial investment on a research programme to find an acceptable and less potentially lethal alternative to the Plastic Baton Round.
- A comprehensive audit of the police estate; a rigorous programme of civilianisation of those jobs which do not require police powers, training or experience; and a review of police support services with a view to contracting out those services where this will enhance efficient management of resources.
- A slimmer structure at police headquarters, reflecting a shift of focus towards community policing and the delegation of responsibility to district commanders.
- The disbandment of the Full Time Reserve, as proposed in the RUC's own Fundamental Review in 1996, but an enlargement of the Part Time Reserve from 1,300 to 2,500 officers, with new recruits coming from areas where there are currently few reservists or none at all.
- A reduction in the size of the force from the current level of 13,000 officers (including 1,300 in the Part Time Reserve) to approximately 7,500 full time officers over the next 10 years.
- An early retirement or severance package for regular officers and full time reservists.

- Contracting out of recruitment of police officers and civilians in the police service, with lay involvement, including community representatives, on recruitment panels.
- Measures to ensure that staff and civilian members of the police service are representative of the wider community.
- All candidates for the police service who achieve a specified standard of merit in the selection procedure being entered into a pool from which an equal number of Protestants and Catholics should then be drawn as recruits.
- Encouragement of Northern Ireland Catholic officers in other police services, including the Garda Síochána, particularly those in more senior ranks, to apply for positions in the Northern Ireland police service. Also encouragement of lateral entry of experienced officers from other police services and secondments or recruitments from non-police organisations.
- Increased emphasis on training.
- Renaming of the RUC as the Northern Ireland Police Service.
- Adoption by the police service of a new badge and symbols which are entirely free from any association with either the British or Irish states.
- The Union flag should no longer be flown from police buildings. The flag of the police service, which should also be free from association with either the British or Irish states, should be flown on those occasions when it would be appropriate to fly a flag on police buildings.
- Increased co-operation, including co-operation in training and long-term personnel exchanges, between the Northern Ireland police and the Garda Síochána, as well as between the Northern Ireland police service and police services in Great Britain.
- Appointment of an eminent person, from a country other than the UK or Ireland, for a term of 5 years, to act as an oversight commissioner with responsibility for supervising the implementation of the Commission's recommendations.

In a statement on the report Mo Mowlam, who was then Secretary of State for Northern Ireland, said she aimed to complete discussion on the report by the end of November and publish a full implementation plan in December.²⁵ She was subsequently quoted as saying:

I think Patten did a fair job and I would prefer not to cherry pick. I don't want to give the impression that everything is up for grabs.²⁶

In a ministerial re-shuffle on 11 October 1999 Peter Mandelson was appointed Secretary of State for Northern Ireland and Mo Mowlam moved to the Cabinet Office.

²⁵ Secretary of State's statement on the Patten report – Northern Ireland Information Service 9.9.1999, www.nio.gov.uk/990909a-nio.htm

²⁶ “Mowlam warns Unionists she will not ‘cherry pick’ from proposals on RUC” – *Independent* 30.9.1999

On 23 November 1999 Buckingham Palace announced²⁷ that the Queen was awarding the George Cross to the RUC in recognition of the 30 year period in which it had been

both the bulwark against, and the main target of, a sustained and brutal terrorist campaign

and

the collective courage of all those who have served in the Royal Ulster Constabulary and who have accepted the danger and stress this has brought to them and their families.²⁸

This is only the second occasion on which the George Cross has been awarded to a group rather than an individual, the first being the award to the island of Malta in 1942. The Queen visited Northern Ireland to make the award at a ceremony at Hillsborough Castle on April 12 2000.

On 19 January 2000 the Secretary of State for Northern Ireland, Peter Mandelson, made a statement in the House of Commons announcing the Government's decisions on the Patten report. The full text of his statement is set out in an appendix to this paper.²⁹³⁰

Mr Mandelson ended his speech by saying:

For those in the Unionist community who have fears, I urge them to accept the need for significant change to create a police service in which all can feel that they belong and with which all can identify. To nationalists who have for so long withheld their support from the police in Northern Ireland, I would ask them to reflect on the transformation that is planned and to reconsider their position. It is now time for them to support this programme of change, unambiguously to support the police and to encourage young men and women from their community to join the police. The prize is a modern, effective police service drawing support and strength from all parts of the community. It is within our grasp. The proposals I have announced today should enable us to achieve it.³¹

In his speech following the statement the Conservative spokesman on Northern Ireland, Andrew MacKay, noted what he described as the Patten report's failure to pay proper testimony to the sacrifice and achievements of the RUC. He went on to say that his party did not believe that the name of the RUC should go and that the security-sensitive measures proposed should not be introduced before there was real and lasting peace and

²⁷ "RUC given the George Cross" – *Belfast Telegraph* 23.11.1999

²⁸ "The George Cross citation" – *Belfast Telegraph* 12.4.2000

²⁹ HC Deb 19 January 2000 c.845-848

³⁰ *ibid* c.845-848

³¹ *ibid* c.848

substantial decommissioning. He said that the greatest disincentive to Catholic recruitment into the RUC was intimidation by the IRA and asked what guarantees the Secretary of State could give that the district policing partnerships and the new Policing Board would not lead to greater politicisation of policing.³²

In reply to Mr MacKay's speech Mr Mandelson said:

I say straight away to the right hon. Gentleman that I certainly share his views about decommissioning. The Good Friday agreement is not there to be cherry-picked; its parts stand or fall together. It is not acceptable for some parts of it to be implemented and for others to be overlooked or forgotten. Decommissioning, as Sinn Fein itself has acknowledged, is an essential part of the peace process. If it is to be completed by the deadline in the Good Friday agreement of May this year, an early start is absolutely necessary.

On the right hon. Gentleman's overall response, I am glad that he shares our vision and goals for a new beginning for policing in Northern Ireland. The problem is that, although he shares the ends, he is not prepared to will the means of getting there and of achieving that new beginning for the police service that we all want.

I, as it happens, regret that the Patten commission did not say more about the sacrifices of the RUC. I have said that before, and it remains my view. I understand why it did not, but it is a deficiency in the report, and an unfortunate one.

I agree with the right hon. Gentleman--I have already said this--that one of the factors, and an important one, in discouraging people from the nationalist community from joining the RUC was straightforward IRA bullying, thuggery and intimidation. However, other important factors are that Catholics and nationalists in Northern Ireland do not identify with the RUC and that the nationalist community does not encourage its young people to join. People from the nationalist community who have thought of joining have feared a loss of family and community support for joining. We have to tackle that problem and make changes to make the police force in Northern Ireland acceptable to the nationalist community as a whole if we are to persuade individuals from that community to come forward and join that force.

I can say quite honestly that in a perfect world I, too, would have kept the name of the RUC. I would have liked it to be maintained. It is a proud name that represents a fine tradition and is rightly honoured by the whole RUC family, but I am afraid that it is not owned by both communities in Northern Ireland. I realise the hurt that is involved in giving up the name, but I equally recognise that the

³² *ibid.* c848-850

police service will never be entirely accepted unless that change is made, so change there must be.³³

The leader of the Social Democrat and Labour Party, John Hume, welcomed the Patten report, saying:

We look forward to working with him and with the other parties to implement the Patten report in full.³⁴

He went on to say:

The parties must take the opportunity to have meetings with the Secretary of State and talk to everyone who needs to be talked to about implementing the Patten report in full. That will give us a police service that has the loyalty of the entire community and a membership drawn from the entire community, so that when policemen walk the streets in Northern Ireland, no matter what district they are in, they are walking among friends. That would be a real change. It is an enormous challenge to us all, and I hope that we are up to it.³⁵

In reply Mr Mandelson said:

I do not think that the hon. Gentleman said a single word with which I disagree, but I have something to add. When we have studied what I have said, debated the detail, considered exactly how the proposals are to be implemented and all reached the conclusion that a new beginning for policing has indeed been created in Northern Ireland, that will be the time when leaders of the nationalist community, like him--both political and religious leaders--must stand up, speak up and back the police, and call for people from the nationalist community to support the police. He is right to take time to look at the details of what I have said. I hope that in due course, when he has studied them, that call will be forthcoming.³⁶

The Liberal Democrat spokesman, Lembit Öpik, said his party was largely in support of the proposals in the Patten report, particularly the emphasis on human rights, including the commitment to uphold human rights in the oath, the concept of district policing, and the introduction of video recording in custody suites. He noted the sensitivity with which issues such as the RUC's name and its symbols would have to be handled.³⁷

The Ulster Unionist Party spokesman, Ken Maginnis, said the announcement:

³³ *ibid.* c850

³⁴ *ibid.*

³⁵ *ibid.* c851

³⁶ *ibid.* c851

³⁷ *ibid.* c851-852

degrades, demeans and denigrates an honourable force that has stood four-square between the law-abiding community--the greater number of people in Northern Ireland--and the terrorists for the past 30 years? Can I suggest to the Secretary of State that it is misleading of him to suggest that the changes that are taking place have anything to do with the Belfast agreement, or with anything that my party assented to within the terms of that agreement?³⁸

He went to express concern about the proposal to change the name of the RUC and the likely involvement of members of Sinn Fein in the proposed district police partnerships.³⁹

In his reply the Secretary of State said:

On the three specific points, it is true that the decisions I am announcing today stand alone on their own merits and independently from the Good Friday agreement. I intend that the reform of the police in Northern Ireland will continue, whatever cloud happens to gather over the institutions of the Good Friday agreement.

As for the district police partnerships, there is no question of any member of any district police partnership being able to exercise any improper influence, let alone control, over any aspect of police operations or any individual member of the police in that district. As far as human rights training is concerned, each member of the police board will be subject to the same strictures and expectations as every member of the police service of Northern Ireland.⁴⁰

In his speech John D. Taylor, the deputy leader of the Ulster Unionist Party, said the Ulster Unionist party agreed with 70 or 80 % of the Patten report, agreed that there was a need for more Catholic police officers in Northern Ireland and agreed that there must be training in human rights for police officers and members of police board. He considered, however, that this could be achieved without changing the name of the RUC.⁴¹

In the course of his reply to this the Secretary of State said:

I say to the right hon. Gentleman, with all genuine respect, that I do not agree, and cannot accept, that, if we failed to change the RUC's name, it would simply be possible to wait indefinitely for people from the nationalist community to join the police. I do not believe that it would happen. If I thought that there was any way that we could have made those changes and transformed the composition of the police in Northern Ireland without changing the name, I would have done it.

On the basis of all my contacts, my conversations, my research and my exposure to opinion in the nationalist community, I do not accept that nationalists or

³⁸ *ibid.* c852

³⁹ *ibid.* c853

⁴⁰ *ibid.* c854

⁴¹ *ibid.* c860

Catholics in Northern Ireland would join a police service that continued to be called the RUC. Frankly, they associate that name with Unionism and the British state. They accept that the principle of consent is enshrined in the Good Friday agreement, but they also have a nationalist identity and aspiration, and those must be made compatible with their desire to join the police service. I am afraid that a change in the name is a necessary condition for that.⁴²

In a debate on 24 January 2000 the Northern Ireland Assembly, in which members of unionist parties have a majority of seats, voted by a majority of 50 votes to 42 to reject the Patten reforms.⁴³ The *Guardian* commented that:

Because after devolution security remains the responsibility of Peter Mandelson, Northern Ireland secretary, the vote was largely symbolic.⁴⁴

On 7 February 2000 the Executive Committee of the Ulster Unionist Council passed a resolution saying:

The Executive Committee of the Ulster Unionist Council, whilst welcoming constructive proposals to enhance the operational capability of the Royal Ulster Constabulary, deeply regrets the decision by Her Majesty's Government to accept the more controversial recommendations of the Patten Commission.

Ulster Unionists remain resolutely opposed to these recommendations, including proposals to abolish the proud name and insignia of the Royal Ulster Constabulary and to politicise policing through the establishment of District Policing Partnerships. These proposals fail to meet the requirement for widespread community support.

While continuing to oppose such changes during the passage of legislation to implement Patten's recommendations the Ulster Unionist Party will also raise these issues in the course of any review or further inter-party talks and will require them to be satisfactorily resolved.⁴⁵

On 11 February 2000, as has already been mentioned, the Secretary of State signed an order suspending the Northern Ireland Executive and Assembly, with effect from the following day, because of problems with decommissioning of weapons.

On 12 February the Ulster Unionist Council passed a resolution saying the Council :

endorses the resolution of the Executive Committee of 7 February 2000 in relation to the Patten Report;
endorses the recommendation of the Leader to establish a broadly based working party to examine the political way ahead in the context of the Review.

⁴² *ibid.* c861

⁴³ <http://www.ni-assembly.gov.uk/record/000124.htm>

⁴⁴ "Assembly rejects RUC reforms" - *Guardian* 25.1.2000

⁴⁵ <http://www.uup.org/current/exec0702.html>

In the event of any proposal by the Secretary of State to revoke the suspension of the Assembly and Executive, before any UUP participation the Leader will make a further report to this Council.⁴⁶

In an Opposition Day debate at Westminster on the Patten report, called by the Ulster Unionist Party on 6 April 2000, the leader of the Ulster Unionists, David Trimble, called the Patten report “flawed and shoddy” and went on to suggest that instead of encouraging support for the police the report would discourage such support.⁴⁷ He expressed the view that the report had already discouraged support by failing to recognise the service and sacrifice of police officers. He added that, in his view, it had also discouraged support by recommending that the name and badge of the RUC be changed, without presenting evidence or argument in support of these proposals, and by proposing that the Union flag should not be flown over police stations. He said that the report had been insensitive towards RUC widows and disabled police officers.⁴⁸

Mr Trimble also suggested that the proposal to introduce 50:50 recruitment of Protestant and Catholic officers and a targeted recruitment of 1,000 new reservists from Catholic nationalists areas represented a derogation from the principle set out in the Belfast Agreement that the creation of a statutory obligation on various public authorities to promote equality of opportunity in relation to religion and political opinion should be a particular priority.⁴⁹ He expressed the view that the creation of district policing partnerships would enable politicians connected with various paramilitary organisations to exercise undue influence over policing.⁵⁰ Noting that Mr Patten had said that one of the key objectives of the report of the Commission was to take politics out of policing he went on to say:

Patten is trying to do something quite separate and he has got himself confused. He is trying to take the constitutional issue out of policing, as if it was still a live issue. He is trying to deal with the situation as if the state and institutions of Northern Ireland should be neutral as between the two competing national identities. The agreement itself would take the constitutional issue out of Northern Ireland politics and institutions if parties would accept and implement the agreement in its entirety. The commission failed to observe key constitutional aspects of the agreement.

On constitutional matters, the agreement went beyond a mere acceptance of the consent principle. The relevant section of the agreement is paragraph 1, which states that the parties

⁴⁶ <http://www.uup.org/current/uuc1202.html>

⁴⁷ HC Deb 6 April 2000 c.1210-1216

⁴⁸ *ibid* c.1210

⁴⁹ *ibid.* c1212

⁵⁰ *ibid.*

recognise the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status.

The key word there is "legitimacy". The same paragraph states that the parties acknowledge that that choice

freely exercised and legitimate, is to maintain the Union.

Again, the emphasis is on legitimacy. The parties are recognising the legitimacy of Northern Ireland's position within the United Kingdom. Put simply, all the parties to the agreement, whether or not they will acknowledge it, are accepting British sovereignty in Northern Ireland. There cannot then be any objection to the normal and reasonable expression of that sovereignty.⁵¹

Mr Trimble added:

There is also a striking contrast with the recently published report of the review of criminal justice in Northern Ireland. Its recommendations with regard to the courts are in complete contrast to Patten's recommendations on the police. The review suggests that the title should remain the royal courts of justice, that the badge which is the royal coat of arms should be retained and that the Union flag should continue to be flown.

The police and the courts are part of the same system. It would be wrong to have such a completely different approach to symbols within the same system. There should be consistency and it is clear what that consistency should be. The Government have not yet responded to that review. I hope that they are not so determined to defend Patten's mistakes that they extend his mistaken approach to the courts system itself.⁵²

In an intervention during the debate ,the leader of the Social Democrat and Labour Party (SDLP), John Hume, said:

In reply to the point made by the right hon. Member for Bridgwater (Mr. King), there is no doubt that we want a police service that has the loyalty of the entire community and membership from all sections of our community. As I have often said, the basis of law and order in any society is fundamentally agreement on how it is governed; where that is absent, the police, no matter who they are, will be seen as being on one side or the other. They are therefore victims of politicians' failure to reach that agreement. My hope is that the agreement that we have now reached, including the implementation of the Patten report, will provide the basis for a police service that has the membership of all-⁵³

⁵¹ *ibid* c1212-1213

⁵² *ibid.* c1213

⁵³ *ibid.* c1219

The Secretary of State then said of Mr. Hume's intervention:

It was a very welcome intervention, and an important one because the hon. Gentleman has remarked that if, in implementing the Good Friday agreement, we implement what the Patten commission has recommended, the police service will, in his opinion, command the loyalty of all sections of the community. That is a welcome and important statement, and I am grateful to the hon. Gentleman for making it.⁵⁴

In his speech during the debate the SDLP whip, Eddie McGrady, said:

Our attitude to the Patten commission and its recommendations is based on our experiences in our community. The Patten commission did not recommend everything that we asked for, but the report is a reasonable presentation that should have the support of the entire community.⁵⁵

He went on say:

I regret that the centre of the attack, as it were, on the Patten commission is centred on the name and emblem change. That was one aspect of the commission's remit. Symbols are important, because they are symbolic of what they represent; but the Patten commission did what it was told to do. Why was it told to do that? It was because the terms of reference were directly translated from the Good Friday agreement. The second paragraph on page 23, annex 1, specifically requires the commission to address the problem of partisan symbols within the RUC, and that is what it has done.

It annoys me and the community from which I come that by supporting changing the name of the RUC we are somehow denigrating, trampling on or ignoring the sacrifices of RUC men and women and their families over the years. Are memories so fragile in the community that the continuance of a name is needed for sacrifices to be remembered? That is nonsensical. Two world wars were fought and men and women died. Their regiments were renamed or disbanded and nobody advanced the argument that the war dead had been dishonoured.⁵⁶

He added:

Much was made by those on the Opposition Benches, particularly by the official Opposition, about holding everything in abeyance until the security situation is dealt with and clarified. They have missed the point entirely. It cannot be dealt with and violence cannot be finally eradicated until we have the new police service supported and endorsed.⁵⁷

⁵⁴ *ibid.*

⁵⁵ *ibid.* c1230

⁵⁶ *ibid.* c1230-1231

⁵⁷ *ibid.* c1231

In his speech during the debate Mr Mandelson set out the Government's view of the recommendations in the Patten report and said that where some issues were concerned, he had re-examined what the Patten report had proposed:

An opportunity has been offered to create an outstanding modern police service--to allow the police to develop in a way they themselves have wanted to do for years. They will be able to make the transition from an anti-terrorist security force--as they inevitably had to be--to a community-focused and community-based police service working in partnership with the whole community. The new peace in Northern Ireland gives us the opportunity to allow the RUC to do what they wanted and still want to do--I stress that point.

Indeed, many of the central planks of the Patten report--for example, on the size and structure of the police service, on police training, on civilianisation, on community partnership policing, on normalisation of policing, including the amalgamation of special branch and crime branch, the phasing out of the RUC reserve and other proposals that Patten has made--flow directly from the Chief Constable's own fundamental review conducted three years ago. As Les Rodgers, the chairman of the Police Federation, pointed out, Patten was

the adoption in the main of the Fundamental Review.

Even so, when I was appointed to this job a month after Patten delivered his report, I decided to re-examine all the commission's recommendations and to reassess them on their merits. I subjected each to the same test: did it contribute to our aim of securing a modern, effective police service for Northern Ireland capable of attracting widespread community support? In a number of cases, I found it necessary to modify or alter the way in which a recommendation was to be implemented.

I have decided, for example, that the new police oath should not be taken by serving officers, who have already been attested as constables. That would suggest that, in some sense, the RUC, was being disbanded. It is not; that view has been rejected. I also decided that the district policing partnerships should initially be purely consultative bodies and that there should be safeguards to exclude anyone convicted at any time of a terrorist offence from being appointed as an independent member of a district policing partnership. In other matters too, I have gone to every length to ensure the operational independence of the Chief Constable and his officers from political interference.

I am determined to advance these and other changes in a sensitive and balanced way. However, we cannot allow emotions to blind us to the pressing need for change, change that the RUC itself has already acknowledged is necessary and desirable.

The hard reality of policing in Northern Ireland and the reason policing was remitted to the Patten commission in the first place is this: although 80 per cent. of Protestants are content with policing, fewer than 50 per cent. of Catholics are satisfied, as reported by Patten; the annual community attitudes survey - leave

aside what the Patten commission established--shows that although 70 per cent. of Protestants think that police treat the two communities equally, only 30 per cent. of Catholics agree. I am not endorsing that statement; I am not saying that it is true. However, we cannot dispute the perception that exists among the Catholic population.

In the same survey, three quarters of Catholics and 60 per cent. of Protestants hold the view that there are too few Catholics in the police service. The reason for that is that 88 per cent. of the police are from the Protestant side of the community. That is in spite of the great efforts made by the Chief Constable and by the police authority to achieve a more balanced service.⁵⁸

Following an intervention by Rev. Ian Paisley about intimidation of Roman Catholic officers in the RUC the Secretary of State said that while intimidation by the IRA had been a significant factor in preventing Catholics from joining the RUC it was not the only factor. He continued:

Peer pressure, lack of community support, lack of identification with the RUC, fear of loss of family contact and an expectation among Catholics of having to submerge their nationalist identity should they go into the RUC--I am not suggesting that they will; that is the fear and apprehension among Catholics--are factors and they have all played a part. It is those factors that we are addressing and trying to remedy in the changes that we advocate today.

Northern Ireland is a divided society and the issue of policing throws those divides into sharp relief. To be fully effective a police force must be representative of the community that it serves and it must also command widespread support across that community. That is why I was persuaded that serious and radical changes were needed to redress the extreme religious imbalance in the composition of the RUC. That included changing the name.⁵⁹

A. The debate on the Secretary of State's proposals concerning the RUC's name

In his speech during the Opposition Day debate on 6 April 2000 Mr Mandelson made the following comments about his proposals concerning the RUC's name:

The Patten report concluded that

the name of the RUC . . . had become politicised--one side of the community effectively claiming ownership of the name and that the use of those words . . . must inevitably go some way in inhibiting wholehearted participation in policing.

⁵⁸ *ibid.* c1217-1218

⁵⁹ *ibid.* c1218

To be absolutely frank, my starting point was to challenge that view. I recognised the pain that changing the name would cause and questioned whether it was really necessary and indispensable in attracting a balance in recruits. After a lot of thought and genuine consideration, I concluded that it was necessary.

I concluded, however, that small but significant changes to Patten's recommendations were called for. For example, the new name--Police Service of Northern Ireland--has been modified and will be adopted only when the first new recruits enter through the new recruitment procedures in autumn 2001. Nothing that we are doing is overhasty or accelerated. Logically, the new badge of the police service will be introduced at the same time, but I have not decided what the badge should be, and I am not convinced that it need be entirely free of association with both traditions.

I have listened carefully to the arguments made by the right hon. Member for Upper Bann. I acknowledge that many Unionists and many in the police family vigorously oppose the change and I have experienced at first hand their continuing opposition. Equally, however, it is very clear to me from all that I have heard from nationalist political, church and community leaders that, in their opinion, a change in the name is essential if the changes to the police are to succeed in changing not only people's perceptions of the police, but their attitudes to volunteering and recruitment to the police service in the future.

That view is not confined to nationalists. Editorials in the *Belfast Telegraph* on 19 and 20 January at the time of the announcement of the Government's decision recognised that while the sacrifices of the RUC should be remembered in a new policing era,

sadly, there would have been little chance of progress towards a broadly acceptable force without some change in the name and symbols, which were a legacy of the past.

The *Belfast Telegraph* got it right.

The *Belfast Newsletter* said that Unionists

would do well to take their cue

from the police who would

take all the changes in its professional stride.

I want to make it absolutely clear: changing the name has nothing to do with the issue of sovereignty or Northern Ireland's constitutional status. Northern Ireland will remain a part of the United Kingdom for so long as that is the wish of a

majority of its people. No matter how much smoke some people create, the name change is about effective and representative policing--nothing more and nothing else.⁶⁰

Mr Mandelson's comment that he was not convinced that the RUC badge, which currently incorporates both a crown and a harp, needed be entirely free of association with both traditions was described by the *Independent* as offering a "major concession to the Ulster Unionists".⁶¹

On 5 May 2000 the Prime Minister and the Secretary of State met with the police associations representing all officers in the RUC to discuss the proposed voluntary early retirement and severance package for RUC officers. The Prime Minister said:

I understand the uncertainty and indeed worry felt by many officers during this period of change but I also know the men and women of the RUC will rise to the challenges of the future with the same degree of professionalism and commitment they have always demonstrated in the past.⁶²

The *Police (Northern Ireland) Bill*⁶³ was published on 16 May 2000. The Bill itself does not provide a new name for the police in Northern Ireland. Instead, Clause 69(3) of the Bill is intended to enable the Secretary of State to make an order concerning the name of the police service and the police service reserve in Northern Ireland. Clause 50 of the Bill similarly seeks to enable the Secretary of State to make regulations prescribing the design of emblems and flags for the police force and regulating their use.

The postponement of a final decision on the name of the police force in Northern Ireland was seen by some journalists as a further concession to Unionist opinion.⁶⁴ Mr Mandelson made the following comments about the name of the police force in Northern Ireland in answer to an oral question on from Harry Barnes on 17 May 2000:

Two of Patten's stated objectives were that the RUC should not be disbanded and that the police service in future must be capable of attracting recruits from all parts of the community. We need to judge the future name against both those objectives. The Police (Northern Ireland) Bill requires me to consult the policing board before reaching a final decision on the name. I believe that the sensible way forward is to provide a legal description in the Bill which incorporates the Royal Ulster Constabulary, in effect the title deeds of the new service, while introducing a new name that will be used for all working and operational purposes. The Police Service of Northern Ireland is the best suggestion so far. In that way we should be able to meet both of Patten's correct objectives.⁶⁵

⁶⁰ *ibid.* c1220-1221

⁶¹ "Mandelson may allow the RUC to keep its crown" – *Independent* 7.4.2000

⁶² Meeting between Prime Minister and Secretary of State with the Police Associations" – Northern Ireland Information Service 5.5.2000

⁶³ Bill 125 of 1999-2000

⁶⁴ "Decision on renaming RUC is delayed to appease Unionists" – *Independent* 16.5.2000

⁶⁵ HC Deb 17 May 2000 c319-320

The *Financial Times* described this as a “final concession” to Unionists, designed to help the Ulster Unionist leader, David Trimble, convince his party that he should return to the power-sharing executive.⁶⁶ The SDLP and Sinn Fein are reported to have expressed concern about what they see as divergences between the *Police (Northern Ireland Bill)* and the recommendations of the Patten Commission and the Taoiseach, Bertie Ahern, is reported to have warned the Government not to go too far.⁶⁷ The *Financial Times* commented that:

Government officials say ministers are treading a fine line between satisfying unionist fears over the RUC and alienating republican sentiment towards the new police force.⁶⁸

The Northern Ireland minister, Adam Ingram made the following comments about the name and insignia of the RUC in a written answer to a question from Mr McNamara on 24 May:

The drafting of the Police (Northern Ireland) Bill has required consultation and discussion with a wide range of individuals, bodies and parties, as did the consultation process when Patten was published.

The Government’s position on the name and insignia has been made clear. On the name this was done in the Secretary of State’s statement to Parliament on 19 January 2000, *Official Report*, column 848, and in response to an oral question from my hon. Friend the Member for North-East Derbyshire (Mr. Barnes) on 17 May 2000, *Official Report*, column 319. On the badge, the Secretary of State said in the House on 19 January 2000, *Official Report*, column 848, that the badge would incorporate the new name in autumn 2001 and on 6 April 2000, *Official Report*, column 1221, he told the House that he was not convinced the badge need be entirely free of association with both traditions. The published Bill contains enabling provisions on both issues.⁶⁹

As has already been mentioned, the Ulster Unionist Council voted at its meeting on 27 May 2000 in favour of a return to devolved government⁷⁰ and the Secretary of State for Northern Ireland, Peter Mandelson, then signed an order restoring power over devolved matters to the power-sharing Northern Ireland Executive from 00.00 a.m. on 30 May 2000.⁷¹

⁶⁶ “Unionists get ‘final’ concession on RUC” – *Financial Times* 18.5.2000

⁶⁷ “Dublin joins row over symbols on police caps” – *Financial Times* 19.4.2000; “Both sides in peace process say British being ambiguous” – *Irish Times* 16.5.2000; “It’s Patten and only Patten for the SDLP” – *Irish News* 23.5.2000; “Police Bill must be sorted out: Mallon” – *Irish News* 24.5.2000; “Where nationalists and government take issue on the future of Ulster policing” – *Guardian* 26.5.2000.

⁶⁸ “Unionists get ‘final’ concession on RUC” – *Financial Times* 18.5.2000

⁶⁹ HC Deb 24 May 2000 c544-545W

⁷⁰ “Unionists back power-sharing” – *BBC Online* 27.5.2000

⁷¹ “Devolution returns to Northern Ireland” – *BBC Online* 30.5.2000

Not all the recommendations of the Patten Commission would require legislation if they were to be implemented. The Government intends to publish an Implementation Plan, about which the Northern Ireland minister Adam Ingram made the following comments in a series of written answers on 3 May 2000:

Mr. McNamara: To ask the Secretary of State for Northern Ireland if, when he publishes his Implementation Plan for the Patten proposals, he will list those items on which the Chief Constable has already started out.

Mr. Ingram: The Implementation Plan will show the items where the Chief Constable has the lead responsibility for taking work forward and any progress which has already been made.

Mr. McNamara: To ask the Secretary of State for Northern Ireland if, when he publishes his Implementation Plan for the Patten proposals he will indicate those proposals which have human rights and equality implications that have been referred to the Human Rights and Equality Commissions and their replies in each case.

Mr. Ingram: The Implementation Plan will set out for each recommendation which has been accepted, the programme of work required and who has the lead responsibility for taking the work forward. It will be for those with the lead responsibility to consult and work with the Human Rights and Equality Commissions, as appropriate, in taking the work forward.

Mr. McNamara: To ask the Secretary of State for Northern Ireland if on the date he publishes the proposed legislation to implement the Patten report and the implementation plan he will name the Oversight Commissioner and the Commissioner's assistants.

Mr. Ingram: The search for a suitable candidate for appointment as Oversight Commissioner is in hand. The Government will make an announcement in due course.⁷²

On 31 May 2000 Tom Constantine, former Director of the US Drugs Enforcement Administration, former Chief of Police for New York State and an Irish-American Roman Catholic, was appointed as Oversight Commissioner, charged with monitoring the implementation of the Patten report.⁷³

IV The Police (Northern Ireland Bill)

The Bill's *Explanatory Notes* describe the purpose of the Bill as being to implement those recommendations of the Patten Commission which have been accepted by the

⁷² HC Deb 3 May 2000 c108-1-9W

⁷³ "US drugs enforcer appointed as police oversight commissioner" – Northern Ireland Information Service 31.5.2000; "Officers hail the choice of US police chief" – *Times* 25.5.2000

Government following consultation. They note that some of the Government's decisions on the Patten report announced by the Secretary of State for Northern Ireland on 19 January 2000⁷⁴ are administrative and structural changes which do not require legislation. This part of the paper discusses some of the Bill's provisions.

A. New arrangements for policing in Northern Ireland

Parts I-IV of the Bill set out new arrangements for the governance of policing in Northern Ireland. In some cases the Clauses simply replace provisions in the *Police (Northern Ireland) Act 1998*. In others, such as for example, Clauses 5 and 6, which are concerned with the Policing Board's powers to provide buildings and equipment and acquire and dispose of land, the new provisions remove some of the Secretary of State's detailed controls under the present legislation. The Patten report described the provisions of the 1998 Act concerning the setting of objectives, policing plans and so on as labyrinthine and confusing. The report also noted that the powers of the Police Authority under the legislation were greatly constrained by the role given to the Secretary of State.⁷⁵

1. The Northern Ireland Policing Board

a. Functions, powers and duties of the Board

The Patten report recommended that the Police Authority for Northern Ireland be replaced by a new Policing Board with the statutory primary function of holding the Chief Constable and the police service publicly to account.⁷⁶ Part I and Schedules 1 and 2 of the Bill are duly designed to provide for a new Northern Ireland Policing Board to replace the Police Authority for Northern Ireland, which will be dissolved.

Clause 2 seeks to give the Board responsibility for "securing the maintenance of the police force in Northern Ireland" and to require the Board to secure that the police force, the police support staff and traffic wardens are "efficient and effective". In carrying out these functions the Board will be required to:

- Hold the Chief Constable to account for the exercise of his functions and those of the police force, police support staff and traffic wardens;
- Monitor the performance of the police force in carrying out its general duty under Clause 30(1), complying with the *Human Rights Act 1998* and carrying out the policing plan;
- Keep itself informed about the workings of police complaints and discipline proceedings under Part VII of the *Police (Northern Ireland) Act 1998* and trends and patterns in such complaints; the way in which

⁷⁴ HC Deb 19 January 2000 c845-848

⁷⁵ *A New Beginning: Policing in Northern Ireland – the Report of the Independent Commission on Policing in Northern Ireland* paragraph 5.11

⁷⁶ *ibid.* paragraphs 6.2-6.3

complaints about traffic wardens are dealt with by the Chief Constable under Clause 64 of the Bill; trends and patterns in crimes committed in Northern Ireland; trends and patterns in recruitment to the police force and the police support staff and the extent to which the membership of the police force and support staff is representative of the community in Northern Ireland;

- Assess the effectiveness of measures taken to ensure that the police force and police support staff are representative of the community in Northern Ireland, the level of public satisfaction with the performance of the police force and the effectiveness of arrangements made under Part II of the Bill in obtaining the views of the public about policing matters and the co-operation of the public with the police in preventing crime
- Make arrangements for obtaining the co-operation of the public with the police force in preventing crime.

In carrying out its functions the Board will have to consider the policing plan it will have issued under Clause 24 and any codes of practice issued by the Secretary of State under Clause 25. It will also have to consider the need to co-ordinate its activities with those of other statutory authorities and to co-operate with those authorities.

The duties which the Board is intended to have under the provisions of the Bill include:

- Appointment of the Chief Constable, subject to the approval of the Secretary of State, by virtue of Clause 33(1);
- Appointment of the other senior officers of the police service, subject to the approval of the Secretary of State and the Chief Constable, by virtue of Clause 33(2);
- Calling on the Chief Constable to retire, if required by the Secretary of State under Clause 33(3) (b);
- The preparation of the budget for policing, based on draft estimates prepared by the Chief Constable, under Clause 9;
- Putting the annual police grant provided by the Secretary of State and any other amounts received at the disposal for the Chief Constable, who will be operationally responsible for managing the financial resources of the police.
- The determination and revision, of objectives for the policing of Northern Ireland, following consultation, under Clause 23;
- The issuing of a plan (“the policing plan”) under Clause 24;
- Observing codes of practice relating to the discharge of its functions issued by the Secretary of State under Clause 25;
- Making arrangements to comply with orders made by the Secretary of State under Clause 26 to “secure continuous improvement in the way in which its functions are exercised, having regard to a combination of

economy, efficiency and effectiveness” through “performance indicators”, “performance standards” and other measures;

- The issuing of annual reports on policing in Northern Ireland under Clause 53
- Also under Clause 53, the preparation and issuing of reports to the Secretary of State on such matters connected with the discharge of its functions, or with the policing of Northern Ireland, as he may specify.

The Board will have additional powers under the Bill to do the following:

- Call on the Chief Constable to retire, in the interests of efficiency and effectiveness, subject to the approval of the Secretary of State, under Clause 33(3)(a)
- Employ police support staff under Clause 3;
- Employ its own staff under Schedule 1(13)
- Provide and maintain buildings and equipment for police purposes under Clause 5;
- Acquire, hold and dispose of land for police purposes under Clause 6;
- Borrow or raise money for police purposes, subject to certain conditions set out in Clause 8(4)-(8);
- Under Clause 7, to provide advice and assistance, including the secondment of police officers, to international organisations or institutions or any other person or body engaged in policing activities outside the UK, with the consent of the Secretary of State;
- Under Clause 12, pay rewards for exceptional diligence or other specially meritorious conduct to police officers, support staff and traffic wardens, on the recommendation of the Chief Constable;
- Under Clause 17, require a district policing partnership established under Part II of the Bill to report on any specified matter connected with the exercise of its functions. The Board will have discretion over whether or not to publish any such report and the manner of its publication;
- Issue a code of practice under Clause 18, with the consent of the Secretary of State, containing guidance for district policing partnerships on the exercise of their functions.

b. Appointment and membership of the Board

Schedule 1 of the Bill is designed to provide for the appointment and establishment of the Board and for the Board’s staffing, funding and procedure.

It is intended that the Board should have 19 members. During devolved government 10 members (“political members”) will be nominated from the Northern Ireland Assembly using the D’Hondt formula. The remaining 9 members (“independent members”) will be appointed by the Secretary of State. Schedule 1(8) requires the Secretary of State to

exercise his powers of appointment so as to secure that as far as is practicable the membership of the Board is representative of the community in Northern Ireland. It also requires him to consult the First Minister and deputy First Minister, district councils and such other bodies as he considers appropriate before making such an appointment.

Paragraph 7 of Schedule 1 sets out the D'Hondt formula for selecting the 10 political members of the Board. The provisions are based on those used for the selection of Northern Ireland ministers in the devolved government under section 18 of the *Northern Ireland Act 1998*. The process is described in paragraph 7(3)-(8) of the *Police (Northern Ireland) Bill* as follows:

(3) At the request of the Secretary of State, the nominating officer of the political party for which the formula in sub-paragraph (7) gives the highest figure may nominate a person as a member of the Board who-

- (a) is a member of that party and of the Assembly; and
- (b) is not disqualified for membership of the Board.

(4) The nominated person may take up office as a member of the Board by making a statement to that effect to the Secretary of State.

(5) If-

- (a) the nominating officer does not exercise the power conferred by sub-paragraph (3) within the prescribed period; or
- (b) the nominated person does not take up office as a member of the Board within that period,

that power shall become exercisable by the nominating officer of the political party for which the formula in sub-paragraph (7) gives the next highest figure.

(6) Sub-paragraphs (3) to (5) shall be applied as many times as may be necessary to secure that all of the offices as political member are filled.

(7) The formula is-

S

1 + M

where-

S = the number of seats in the Assembly which were held by members of the party on the day on which the Assembly first met following its election; and

M = the number of members of the party (if any) who hold office as a political member of the Board.

(8) Where the figures given by the formula for two or more political parties are equal, each of those figures shall be recalculated with S being equal to the number of first preference votes cast for the party at the last general election of members of the Assembly.

The D'Hondt formula is also used in elections to the European Parliament in Great Britain (The single transferable vote is used in Northern Ireland). The Home Office website's guide to the European Elections includes a worked example showing how the process works in practice. The example is set out as an appendix to this paper.

Schedule 1(10) seeks to disqualify Ministers and junior Ministers in the Northern Ireland Executive; police officers; members of the police support staff; the Police Ombudsman for Northern Ireland; members of district policing partnerships; and people excluded from holding office as Ministers or junior Ministers under section 30(1) of the *Northern Ireland Act 1998* from membership of the Board. Schedule 1(9) also seeks to enable the Secretary of State to remove a person from office as an independent or political member of the Board if he is satisfied that the person:

- has been convicted of a criminal offence;
- has become bankrupt or made a composition or arrangement with his creditors;
- is not committed to non-violence and exclusively peaceful and democratic means;
- is otherwise unable or unfit to discharge his functions as a member of the Board.

The Secretary of State will also be able to remove a person from office as an independent member of the Board under Schedule 1 if he is satisfied that the person has failed to comply with the terms of his appointment.

2. Local Policing Arrangements and District Policing Partnerships

The Patten report recommended that each district council establish a “district policing partnership board” as a consultative body concerned with policing in the area covered by the council concerned.⁷⁷ Clause 13 of the Bill duly seeks to require each district council in Northern Ireland to establish a “district policing partnership” for its council area. Schedule 3 is designed to make provision for the establishment of the partnerships and the manner in which they should conduct their proceedings. The *Explanatory Notes* say that:

The effect of this clause is to provide for the establishment of up to 26 district policing partnerships. Under paragraph 16 of Schedule 3 the Secretary of State may, by order, provide, with the agreement of the Board and any council affected by the order, that 2 or more district councils can form a joint partnership.

If a council fails to establish a district policing partnership or to comply with any provision of Schedule 3 the Secretary of State will have powers under Clause 14 to direct it to take action to remedy its default. If the district council fails to comply with the direction it is intended that the Secretary of State should be able to declare the council to be in default and make an order empowering the Policing Board to establish a partnership for the district of the council concerned. Such an order will enable the Board to remove any members of the district policing partnership holding office at the date of the order.

⁷⁷ *ibid.* paragraphs 6.26-6.37

a. *Functions, powers and duties of district policing partnerships and police district commanders*

The general functions of district policing partnerships are set out in Clause 15. The Bill's *Explanatory Notes* comment that:

The role of a district policing partnership is primarily a consultative one. The functions set out in this clause include expressing views to the police; monitoring police performance against the policing plan and the local policing plan; making arrangements to obtain the views of the public on policing and the co-operation of the public with the police; and acting as a general forum for discussion and consultation on the policing of the district.

Clause 16 seeks to require each partnership to submit an annual report on the exercise of its functions to the district council, after consultation with the district commander of the local police district. The council will be required to publish the report and send a copy to the Policing Board. Clause 17 will also require a partnership to submit a report to the Policing Board on any matter connected with the exercise of the partnership's functions when asked to do so by the Board. The Board will have the power to publish any such report.

Clause 18 is intended to enable the Policing Board to issue a code of practice on the exercise of the functions of the district policing partnership, after having consulted the district councils and the Chief Constable. The Clause sets out matters which the code may cover, including the procedures for meetings of district policing partnerships, the holding of public meetings and the arrangements for enabling questions on the discharge of police functions in the district to be put by members of the partnership for answer by the district commander.

Clause 19 provides for each district, other than Belfast, to be a police district. In Belfast, there will be up to 4 police districts determined by the Chief Constable. For each police district the Chief Constable will be required to designate as district commander of that district a member of the police service who is of at least the rank of chief inspector.

Each district commander will be required by Clause 20 to issue and publish a local policing plan, after consultation with the district policing partnership. The local policing plan will set out arrangements for the policing of the district. These will have to be consistent with the policing plan published by the Policing Board.

Clause 21 is designed to enable a district policing partnership, or in the case of default by the partnership the Policing Board, to make arrangements to facilitate consultation by the police force with any local community within the district. The partnership or Board will have to consult the Chief Constable before any such arrangements are made. The arrangements may include the establishment of bodies, the reasonable expenses of which the Policing Board will have powers to defray. The *Explanatory Notes* say that:

The clause provides for consultation at a level below district policing partnerships and recognises the role of the current community and police liaison committees.

b. Membership of District Policing Partnerships

Schedule 3 is intended to set out how a district policing partnership should be established and carry out its proceedings. Partnerships will consist of 15, 17 or 19 members as the council may determine. In determining the overall size of the partnership the council will have to have regard to the number of members constituting the council. It will also have to have regard to its duty, set out in paragraph 3(1) of Schedule 3, to ensure that the political membership of the partnership reflects the balance of parties prevailing among the members of the council immediately after the last local general election. In all cases, the number of political (council) members will have to be one more than the number of independent members.

People holding or vacating office as political members of partnerships will do so in accordance with the terms of their appointment and will hold office until the date of the local general election next following their appointment.

Independent members of partnerships will be appointed by the Policing Board from among people nominated by the council concerned. They will hold office until the date of the local general election next following their appointment. Councils will be required to nominate people who are willing to be candidates for appointment as independent members. They will also be required to nominate twice the number of appointments to be made, unless the Policing Board agrees otherwise and itself nominates a sufficient number of candidates to bring the total number of candidates up to twice the number of appointments to be made. The Secretary of State will have the power to issue a code of practice, following consultation with the Policing Board and district councils, giving guidance to councils on the appointment of independent members to district policing partnerships.

3. Duties and powers of the Secretary of State

The Secretary of State will be required under Clause 8 to make an annual grant to the Board for police purposes of such amount, at such time within or after the financial year concerned and subject to such conditions as he may determine. He will also be required to make an annual grant to the Board under Schedule 1(15) for defraying the expenses of the Board. Clause 42 also seeks to require him to make regulations prescribing the arrangements to be made by the Chief Constable, or a person to whom recruitment functions are contracted-out under Clause 41, for the recruitment of the new category of trainee police officers (“police service trainees” and “police service reserve trainees”) to be created under the Bill. The category of trainee is being created in response to the recommendation of the Patten Commission that recruits to the police force should only be attested as constables once they have successfully completed their recruitment training.

In addition to having to be consulted about various matters already mentioned in this paper the Secretary of State will have powers under the provisions of the Bill:

- to approve the Board's appointment of the Chief Constable under Clause 33(1);
- to approve the Board's appointment of other senior police officers under Clause 33(2);
- to approve the Board's call for the Chief Constable to retire or to require the Board to call on the Chief Constable to retire, under Clause 33(3);
- to provide by regulations under Clause 4 of the Bill for the transfer to the employment of the Board of any civil servant engaged in providing administrative, secretarial or other assistance to the police force;
- to determine and revise objectives for the policing of Northern Ireland under Clause 22;
- to issue and revise codes of practice relating to the discharge by the Board of any of its functions;
- to issue and revise codes of practice
- under Clause 29, if he is satisfied that the Board or Chief Constable is failing to comply with the requirements of an order under Clause 26 relating to the force's economy, efficiency and effectiveness, to direct the Board or the Chief Constable to take any action he considers necessary or expedient to secure compliance with the provision in question.

The establishment, organisation and control of the Royal Ulster Constabulary and of any other police force (other than the Ministry of Defence Police), is a reserved matter under Schedule 3 of the *Northern Ireland Act 1998*, as are the prevention and detection of crime and the maintenance of public order. The Secretary of State will still therefore be responsible to Parliament for these matters.

4. Functions, duties and powers of the Chief Constable

Clause 31 of the Bill provides that:

- (1) The police force shall be under the direction and control of the Chief Constable.
- (2) In discharging his functions, the Chief Constable shall have regard to-
 - (a) the policing plan; and
 - (b) any code of practice under section 25.

The Chief Constable's operational responsibilities include the management of financial resources.⁷⁸

The Chief Constable will be appointed by the Policing Board, subject to the approval of the Secretary of State and may be called upon to retire by the Board, subject to the approval, or at the instigation of the Secretary of State.

The Deputy Chief Constable will exercise the Chief Constable's functions in his absence.

The additional duties of the Chief Constable under the Bill include the following:

- Under Clause 11, keeping proper accounts and records in relation to the accounts; preparing a statement of accounts for each financial year in a form determined by the Secretary of State and submitting the statement to the Board, which will send copies to the Secretary of State and the Comptroller and Auditor General;
- Determining the number of police districts in Belfast under Clause 19(2);
- Observing codes of practice issued by the Secretary of State
- Complying with directions given by the Secretary of State under Clause 29 following a failure to comply with an order issued under Clause 26 concerning measures to secure continuous improvement in performance;
- Appointment and promotion to any rank in the police service other than that of a senior officer under Clause 34; appointment of members of the police service reserve under Clause 35; appointment of the new police service trainees and police service reserve trainees under Clauses 37 and 38, subject to the provisions of Clause 43 concerning the appointment of equal numbers of Roman Catholic and non-Roman Catholic trainees ;
- Contracting out in a prescribed manner of certain functions in relation to the recruitment of police service trainees and police service reserve trainees, to be prescribed in regulations made by the Secretary of State ;
- Issuing and revising a code of ethics under Clause 48, setting out standards of conduct and practice expected of members of the police force, following consultation;
- Making arrangements under Clause 51, for each member of the police force to be assigned a serial number;
- Implementing, with the Policing Board, any arrangements made in pursuance of intergovernmental agreements between the UK and Irish

⁷⁸ *Explanatory Notes* paragraph 25

Governments about police co-operation between the police force and the Garda Síochána;

- Submitting an annual report to the Policing Board under Clause 54 and arranging for its publication. Submitting the same report to the Secretary of State so that it can be laid before Parliament;
- Submitting reports to the Board on any other matters specified by the Board, subject to a power to refer the matter to the Secretary of State where it appears sensitive or falls within other categories specified in Clause 55 (3);
- Submitting to the Secretary of State reports on such matters connected with policing in Northern Ireland as he may specify.

5. Policing Objectives and Measures to Improve the Economy, Efficiency and Effectiveness of the Police

As was noted at the beginning of this part of this paper, the Patten report described the provisions of the 1998 Act concerning the setting of objectives, policing plans and so on as labyrinthine and confusing. The report also considered that the requirements that there should be good management of the police service, which costs the taxpayer more than £600 million per year, and that there should be close, expert scrutiny by those responsible for holding the police accountable, were not adequately met. It particularly noted that while the Police Authority was sometimes too closely involved in expenditure, particularly on a bureaucratic level, there was a need for a more structured approach to budgetary planning overall and for improvements in auditing. The report noted that both of these would bring the police service more into line with other forces in the United Kingdom.⁷⁹ The report recommended a substantial strengthening of financial accountability, including a fully costed annual policing plan, a strong audit department within the Policing Board and more systematic use of the Audit Office to study police resource management.⁸⁰

Clauses 22 and 23 of the Bill are designed to replace and simplify the objective setting and planning process set out in the *Police (Northern Ireland) Act 1998*. The new measures provide for the setting of strategic objectives for policing and the issuing by the Policing Board of an annual policing plan. The Secretary of State will be required to set what the *Explanatory Notes* describe as “high level” policing objectives after consulting the Board and Chief Constable. The Board will set objectives for policing after consulting the Chief Constable and district policing partnerships and after having considered any reports by the partnerships or other views raised by members of the community. The Board’s objectives will have to be consistent with those of the Secretary of State.

⁷⁹ *A New Beginning: Policing in Northern Ireland – the Report of the Independent Commission on Policing in Northern Ireland* paragraphs 5.21-5.24

⁸⁰ *ibid.* paragraph 6.46

Clause 24 is designed to require the Board to issue a policing plan before April of each year. The Chief Constable will draft the plan and submit it to the Board, which will be responsible for approving and publishing it. The Board will have powers to amend the draft plan and will have to consult the Secretary of State before publication. Clause 24(2) seeks to enable the Secretary of State to set out, in regulations in the form of statutory rules subject to the negative procedure, minimum requirements as to what the policing plan should cover. The *Explanatory Notes* say that:

The matters to be included will be:

- The Secretary of State's and Board's objectives
- A strategic element setting out policing priorities for a 3-5 year period
- An annual element showing priorities for the year
- Financial resources expected to be available and proposed allocation of those resources by the Board
- Any performance targets established by the Board
- Performance plans under clause 26; and
- An assessment of the training and development needs of police officers and police support staff and particulars of how those requirements are to be met.

Clause 25, which replaces section 38 of the 1998 Act, is designed to enable the Secretary of State to issue codes of practice to the Board. It is also intended to enable him to issue codes of practice to the Chief Constable concerning planning, efficiency, financial and other resources and support staff.⁸¹ The Secretary of State will have to consult the Board and the Chief Constable on any proposed code and will have to publish any codes issued.

Clauses 26-29 aim to require the Policing Board and the Chief Constable to make arrangements to improve the economy, efficiency and effectiveness of their functions in accordance with an order made by the Secretary of State. The *Explanatory Notes* summarise the provisions of these clauses as follows:

The Board and the Chief Constable will be required to review their functions by an order (clause 26(2)) and to publish a performance plan showing how the Board and the Chief Constable intend to meet their obligation (clause 26(4)). Clause 27 provides for the performance plan to be audited by the Comptroller and Auditor General and clause 28 enables the Comptroller and Auditor General to carry out inspections to examine the Board's and the Chief Constable's compliance with their obligation under clause 26. The Comptroller and Auditor General can recommend amendments to a performance plan (clause 27(4)(c)) or that the Secretary of State take action to secure compliance with the Board's or Chief Constable's obligations (clause 27(4)(d) and 28(6)(b)).

Under clause 29, if the Secretary of State is satisfied that the Board or the Chief Constable is failing to comply with their duties under clause 26, he can direct the

Board or Chief Constable to take appropriate action. The Secretary of State can also direct that the Policing Board hold an inquiry or direct such an inquiry himself. Clause 29(7) enables Her Majesty's Inspectorate of Constabulary to carry out inspections of the Board's or the Chief Constable's compliance with their duties under clause 26. The provisions of Part IV are, in part, analogous to Best Value arrangements which apply to police authorities and forces in England and Wales under the Local Government Act 1999.⁸²

6. Inquiries and Reports on the Police

Clause 53 of the Bill, which replaces section 47 of the *Police (Northern Ireland) Act 1998*, requires the Policing Board to issue an annual report and to submit additional reports on policing matters to the Secretary of State if he requests it to do so. The Board's annual report will have to include an assessment of its general functions, as set out in Clause 2 of the Bill. Clause 54, which replaces part of section 48 of the 1998 Act, is intended to require the Chief Constable to publish an annual report.

Section 48 of the *Police (Northern Ireland) Act 1998* currently empowers the Police Authority to require the Chief Constable to submit reports to it on policing matters. If, however, it appears to the Chief Constable that such a report would contain information which "in the public interest ought not to be disclosed" or "is not needed for the discharge of the functions of the Police Authority", he may request that the Police Authority refer the requirement to submit a report to the Secretary of State and in any case the requirement will be of no effect unless it is confirmed by the Secretary of State.⁸³

The Patten report discussed in some detail the concept of police officers' "operational independence" or "operational responsibility", as the report preferred to call it.⁸⁴ The report recommended that the Chief Constable be deemed to have operational responsibility for the exercise of his or her functions and the activities of the police officers and civilian staff under his or her direction and control. It added that neither the Policing Board nor the Secretary of State or Northern Ireland Executive should have the power to direct the Chief Constable as to how to exercise those functions.⁸⁵ The report went on to make the following comments and recommendations about the powers of its proposed new Policing Board to request reports from the Chief Constable and initiate inquiries:

We recommend that the Policing Board should have the power to require the Chief Constable to report on any issue pertaining to the performance of his functions or those of the police service. The obligation to report should extend to explaining operational decisions. The grounds on which the Chief Constable might question this requirement should be strictly limited to issues

⁸¹ *Explanatory Notes* paragraph 44

⁸² *ibid.* paragraphs 48 & 49

⁸³ *Police (Northern Ireland) Act 1998* s.48(3)

⁸⁴ *A New Beginning: Policing in Northern Ireland – the Report of the Independent Commission on Policing in Northern Ireland* paragraphs 6.18-6.21.

⁸⁵ *ibid.* paragraph 6.21

such as those involving national security, sensitive personnel matters and cases before the courts. We recommend that, if there is a disagreement between the Board and the Chief Constable over whether it is appropriate for a report to be provided on a particular matter, it should be for the Chief Constable to refer the question to the Secretary of State for a decision as to whether the Board's requirement should stand. As in the rest of the United Kingdom (including Scotland under the new devolved arrangements there), the Chief Constable remains fully accountable for the involvement of police in matters involving national security, even though his or her main accountability in such matters is to the Secretary of State rather than to the Policing Board.

We further recommend that the Policing Board should have the power, subject only to the same limitation set out in paragraph 6.22, to follow up any report from the Chief Constable by initiating an inquiry into any aspect of the police service or police conduct. Depending on the circumstances, the Board should have the option to request the Police Ombudsman, the Inspectorate of Constabulary or the Audit Office to conduct or contribute to such an inquiry, or to use the Board's own staff, or even private consultants for such a purpose. It will be important for the Board to coordinate its activities with these other bodies, so as to avoid a confused proliferation of scrutiny into the police service. The Board should have the responsibility for overall monitoring of police performance, and its activities will therefore be bound to overlap to some extent with those of the more specialised agencies like the Ombudsman or the Audit Office. Sensible practical understandings will have to be worked out as to who leads on particular issues. We consider it important, however, that the Board should have the power to request another agency to conduct an inquiry and should have the capacity to do so itself. It is also essential that all members of the police service be required to cooperate with that inquiry. Without such an obligation, the Board would be dependent on reports from the Chief Constable with no effective follow-up capacity. It would therefore be powerless against a recalcitrant chief constable unless it was prepared to call for his or her retirement. To be truly effective an institution needs to have more than just one, extreme power which by its nature is difficult to use.⁸⁶

Clause 55 of the Bill seeks to give the Policing Board the power to require the Chief Constable to submit a report on any policing matter. Under Schedule 1, paragraph 17(6)-(7) the Board will be required to determine, publish and comply with procedures for exercising this power. Clause 55 (3) provides that:

If it appears to the Chief Constable that a report in compliance with a requirement under subsection (1) would contain information which ought not to be disclosed-

- (a) in the interests of national security;
- (b) because it relates to an individual and is of a sensitive personal nature;

⁸⁶ *ibid.* paragraphs 6.22-6.23

- (c) because it relates to a matter which is being investigated by a statutory authority;
- (d) because it would, or would be likely to, prejudice proceedings which have been commenced in a court of law; or
- (e) because it would, or would be likely to, prejudice the prevention or detection of crime, the apprehension or prosecution of offenders or the administration of justice,

he may refer the requirement to submit the report to the Secretary of State, and in any such case the requirement shall be of no effect unless it is confirmed by the Secretary of State.

The considerations set out in paragraphs (a) to (e) of Clause 55(3) broadly reflect those which will permit non-disclosure of information under the *Freedom of Information Bill* currently before Parliament.

Clause 56 seeks to create a new power, as recommended by the Patten report, enabling the Policing Board to order an inquiry into any matter on which it has received a report from the Chief Constable if it considers that the matter or any related matter disclosed in the report is grave or that there are exceptional circumstances. The clause refers to matters in reports submitted by the Chief Constable under section 53 (the section requiring the Board to submit annual reports and other reports to the Secretary of State). This is a drafting error and the Northern Ireland Office has said it will be amended so that the reference is to reports received from the Chief Constable under section 55 (the section which will require the Chief Constable to report to the Board on any policing matter it specifies). Under Schedule 1 paragraph 17(4) a decision to hold an inquiry will require the support of 12 members of the Board, as will the appointment of the person to conduct the inquiry. Before causing the inquiry to be held the Board will have to consult the Chief Constable, inform the Chief Constable and Secretary of State of any decision to hold an inquiry and of the matter into which the inquiry is to be made, and send a copy of the relevant report to the Secretary of State.

The Chief Constable will be able to refer the Board's decision to cause an inquiry to be held to the Secretary of State on the same grounds as under Clause 55. If the Secretary of State considers that on any of these grounds an inquiry should not be held or should be discontinued he will have the power under Clause 56(4) to direct that it should not be held or should be halted. He will also be able to give such a direction if he considers that the holding or continuation of the inquiry "would not be in the interests of the efficiency or effectiveness of the police force".

Subject to the confirmation or approval of the Secretary of State the Board will be able to ask the Comptroller and Auditor general, Ombudsman or an inspector of constabulary for Northern Ireland to conduct the inquiry, or appoint any other person to conduct it. The Board will have to meet the costs of holding any inquiry it causes to be held under this provision. The inquiry will not be able to deal with matters that occurred before the implementation of Clause 56.

Clause 57 replaces section 49 of the *Police (Northern Ireland) Act 1998* and is designed to require the Chief Constable to report to the on any policing matters specified by the Secretary of State.

A number of organisations and political parties have expressed concern about the limitations the Bill places on the Board's powers to call for reports and initiate inquiries. These concerns are set out in the last chapter of this paper.

7. The Police Ombudsman for Northern Ireland

Part VII of the *Police (Northern Ireland) Act 1998* provided for the creation of a Police Ombudsman to deal with complaints against the police in Northern Ireland. The establishment of an independent Ombudsman to deal with police complaints was one of the recommendations of a review by Dr. Maurice Hayes of the police complaints system in Northern Ireland, published by the Northern Ireland Office (NIO) in January 1997.⁸⁷

The Ombudsman's powers under Part VII of the Act are summarised on the Northern Ireland Office web-site as follows:

The Police Ombudsman will:

- decide what a complaint is;
- call him or herself in to investigate a case even if there is no complaint, where he or she thinks this is in the public interest;
- decide how a case should be investigated and by whom. The Ombudsman will have his or her own investigators and they will be required to conduct investigations in the most serious cases and could be used at the Ombudsman's discretion in any other case;
- will make recommendations on cases to the Director of Public Prosecutions.

At present this is done by the police.

There will continue to be special arrangements for dealing with 'standard of service' or 'quality of service' type complaints where the police, at the instruction of the Ombudsman and with the agreement of the complainant, will seek to resolve a case locally. The Ombudsman will closely audit these cases.⁸⁸

On 11 October 1999 the Northern Ireland Office announced the appointment of Mrs Nuala O'Loan as Police Ombudsman Designate. The press notice announcing her appointment said the new office would be established in the summer of 2000, when Mrs O'Loan would assume her new statutory powers. It described the office of Police

⁸⁷ *A Police Ombudsman for Northern Ireland?* Northern Ireland Office, January 1997

⁸⁸ www.nio.gov.uk/police.htm

Ombudsman as “a radical new system for dealing with complaints against the conduct of policed officers” and quoted the Northern Ireland minister, Adam Ingram, as saying

This appointment is breaking new ground in the field of investigation into complaints against the police. The Ombudsman will have complete control over the Police Complaints system. She will be required to carry out independent investigations into serious complaints against the police - those where it is alleged that the conduct of a police officer caused death or serious injury. In cases of other complaints the Ombudsman may decide to carry out independent investigations or she may refer them to the police to investigate and may supervise that investigation.

The Police Ombudsman is being appointed on a designate basis until the new office is established, probably in summer of next year when she will formally assume her new statutory powers. This interim period will enable the Ombudsman Designate to have a direct say in the structure, staffing and ethos of the office. It will also allow her to recruit her own staff. This highlights the independence of the office. In the meantime the Independent Commission for Police Complaints will continue to supervise the investigation of serious complaints against the RUC.

I would like to reiterate the commitment that the Government has given that we will ensure that the new office is properly resourced and funded to carry out its functions efficiently and effectively.⁸⁹

In its report the Independent Commission for Policing in Northern Ireland (the Patten Commission) said:

this Commission as a whole aligns itself fully with Dr. Maurice Hayes’ recommendations and believes that a fully independent Ombudsman operating as he envisaged in his report should be a most effective mechanism for holding the police accountable to the law.⁹⁰

The Commission recommended that:

The Police Ombudsman should be, and be seen to be, an important institution in the governance of Northern Ireland, and should be staffed and resourced accordingly. The Ombudsman should take initiatives, not merely react to specific complaints received. He/she should exercise the power to initiate inquiries or investigations even if no specific complaint has been received. The Ombudsman should be responsible for compiling data on trends and patterns in complaints

⁸⁹ Appointment of Police Ombudsman – NIO Press Notice 11.10.1999

⁹⁰ *A New Beginning: Policing in Northern Ireland: The Report of the Independent Commission for Policing in Northern Ireland* September 1999 p.37 paragraph 6.40

against the police, or accumulations of complaints against individual officers, and should work with the police to address issues emerging from this data. He/she should have a dynamic cooperative relationship with both the police and the Policing Board, as well as other bodies involved in community safety issues. He/she should exercise the right to investigate and comment on police policies and practices, where these are perceived to give rise to difficulties, even if the conduct of individual officers may not itself be culpable, and should draw any such observations to the attention of the Chief Constable and the Policing Board. The Ombudsman should have access to all past reports on the RUC.⁹¹

Clauses 58-60 of the Bill are designed to amend provisions in the *Police (Northern Ireland) Act 1998* concerning the Police Ombudsman. Clause 58 is intended to enable the Ombudsman to make reports to the Chief Constable and the Policing Board on matters concerning police practices and policies which come to the Ombudsman's attention and should, in the Ombudsman's view, be drawn to their attention. Clause 59 requires the Ombudsman to compile and supply the Board with statistical and other general information to enable the Board to carry out its duty under Clause 2 of keeping itself informed about trends and patterns in police complaints. Clause 60 is intended to enable the Secretary of State to make regulations setting time limits for complaints and references to the Ombudsman. The *Explanatory Notes* say:

The regulations will permit the Ombudsman to investigate cases where the police conduct in question occurred 24 months, or less, before the creation of his office. In certain specified circumstances, the Ombudsman will also be able to investigate cases before this time.

Clause 61 seeks to require the Chief Constable and the Policing Board to supply the Ombudsman with such information and documents as the Ombudsman may reasonably require for the purposes of, or in connection with, the exercise of any of his functions.

B. The police force

1. General functions of the police force

Clause 30 of the Bill is intended to set out the general functions of the police force. It replaces, with modifications, section 18 of the *Police (Northern Ireland) Act 1998*, which has not yet been brought into force. Clause 30(1) restates the general duty of members of the police force, set out in section 18(1) of the 1998 Act as follows:

- (1) It shall be the general duty of members of the police force-
 - (a) to protect life and property;
 - (b) to preserve order;
 - (c) to prevent the commission of offences;

⁹¹ *ibid.* paragraph 6.41 & p.111 recommendation 38

(d) where an offence has been committed, to take measures to bring the offender to justice.

Under Clause 48 of the Bill the Chief Constable will be required to consult upon, issue and publish a code of ethics for members of the police force on standards of conduct and practice for police officers. In carrying out their functions under Clause 30 members of the police force will be required to have regard to the code.

Clause 30(5) also says:

The members of the police force shall, so far as practicable, carry out their functions with the aim of securing that the policing of any part of Northern Ireland is carried out with the participation and support of the local community.

Clause 66 and Schedule 4 of the Bill replace the existing provisions under which anti-discrimination legislation under the *Sex Discrimination (Northern Ireland) Order 1976*,⁹² the *Race Relations (Northern Ireland) Order 1997*⁹³ and the *Fair Employment and Treatment (Northern Ireland) Order 1998*⁹⁴ is applied to police bodies. The *Explanatory Notes* say:

The main change is to provide for the vicarious liability of chief officers of police for acts of their officers in the provision of goods, facilities or services. The changes, in part, reflect those being made in the Race Relations (Amendment) Bill and arise from a recommendation of the report into the murder of Stephen Lawrence.⁹⁵

Under Clause 51, the Chief Constable will be required to make arrangements for police officers to have a unique identification number and to ensure that, as far as practicable, an officer's number is clearly visible at all times when he or she is on duty and in uniform.

2. Appointment of police officers and trainees

Under Clause 33, which replaces section 21 of the *Police (Northern Ireland) Act 1998*, the Policing Board will appoint the Chief Constable and other "senior police officers", that is, officers of the rank of Assistant Chief Constable and above, subject to the approval of the Secretary of State. The Board will also have the power to call on any senior police officer to retire in the interests of efficiency and effectiveness, with the approval or at the request of the Secretary of State. Under Clauses 34 and 35, the appointment of all police officers below the rank of Assistant Chief Constable and reserve officers will be made by the Chief Constable.

⁹² 1976 NI 15

⁹³ 1997 NI 6

⁹⁴ 1998 NI 21

⁹⁵ *Explanatory Notes* paragraph 81

Clauses 37-39 of the Bill are concerned with the appointment and status of a new category of police service and police service reserve “trainee”. The *Explanatory Notes* say:

The creation of trainees is a consequence of the Patten Report’s recommendation that recruits to the police force should be attested as constables - and, therefore, acquire the powers of a constable - only upon successful completion of their recruit training. Under previous legislation (section 24 of the 1998 Act) recruits became constables immediately upon appointment before they had undertaken any training as a police officer. *Subsection (2)* of clause 34 requires that no one may be appointed as a constable unless they have completed recruit training. Clause 39 outlines a number of conditions which apply to police officers, such as the Chief Constable’s liability for wrongful acts and the prohibition on membership of trade unions to trainees, and enables the Secretary of State to make regulations for the terms and conditions of trainee officers.⁹⁶

Clause 40 is designed to enable the Policing Board, with the approval of the Chief Constable, to appoint people as police cadets to under training with a view to becoming members of the police force.

3. Recruitment

Clause 41 is designed to permit the contracting out of arrangements for the recruitment of police service trainees, police service reserve trainees and certain members of the police support staff. Clause 42 provides the Secretary of State with a power to make regulations concerning recruitment arrangements. The *Explanatory Notes* say:

The Patten Report recommended that, while the Chief Constable should remain responsible and accountable for recruitment, the technical work of recruitment should be contracted out to an outside agency. Clauses 41 and 42 give effect to this recommendation by enabling the Chief Constable to appoint an agent to carry out the recruitment of police officers and police support staff in accordance with any regulations made by the Secretary of State. The Secretary of State must consult the Chief Constable, the Board and the police staff associations on the regulations. *Subsection (4)* of Clause 41 makes it clear that the Chief Constable retains overall liability for the recruitment process.

Detailed matters concerning the recruitment process will be set out in regulations made by the Secretary of State under *Subsection (1)* of clause 42. *Subsection (2)* of clause 42 sets out matters which must be covered in the regulations governing the recruitment process. This will include the involvement of lay representatives on recruitment panels and independent validation of decisions to reject candidates. *Subsections (3), (4) and (5)* require that the regulations provide for

⁹⁶ *ibid.* paragraph 51

pools of qualified candidates for the police service and its support staff to be selected. Candidates for selection to the police service (at constable level) will be selected from pools for the purposes of appointment under clause 43(1) (see below). In respect of police support staff, only where there are 10 or more posts of a similar nature and level to be filled at about the same time will selection be from a pool for the purposes of appointment in accordance with clause 43(4) (see below).⁹⁷

Clauses 43 and 44 of the Bill are designed to introduce temporary provisions relating to the composition of the police force. The *Explanatory Notes* describe their purpose as follows:

The Patten Report recommended exceptional recruitment measures to address imbalances in the perceived religious background of the membership of the police force. The Report said that candidates should reach a specified standard of merit and be selected from a qualified pool on the basis that one half would be Catholics. The Report recommended that police support staff be recruited in similar fashion and that Part Time Reserve members of the police force be recruited locally. In accepting the recommendation on recruitment to the police force the Secretary of State said (statement of 19 January 2000) that the provisions would be time bounded and reviewable triennially. Clauses 43 and 44 give effect to these measures.⁹⁸

The *Explanatory Notes* go on to say:

Clause 43 requires the Chief Constable to appoint from a pool of qualified candidates for the police service and its support staff (where there are 10 or more vacancies - clause 40(4) and (5)) an even number of candidates one half of whom are to be treated as Roman Catholic. *Subsections (2) and (3)* provide for the Secretary of State, after consulting the Board, to make an order modifying the 50:50 recruitment provisions for police service recruits where insufficient numbers of qualified candidates of one community background have come forward to fill one half of the vacancies. *Subsections (5) and (6)* apply existing fair employment monitoring procedures for the purpose of determining perceived community background. *Subsections (7) and (8)* amend fair employment and race relations legislation to except selection of qualified candidates from the pool of qualified candidates on the basis of perceived religious background. The amendment to fair employment legislation also excepts local recruitment of Part Time Reserve members of the police service reserve from being unlawful under the terms of the Fair Employment and Treatment (Northern Ireland) Order 1999. 58. Clause 44 provides that the exceptional measures concerning the composition of the police force and its support staff will expire on the third anniversary of their coming into force unless they are specifically renewed by the Secretary of

⁹⁷ *ibid.* paragraphs 54 & 55

⁹⁸ *ibid.* paragraph 56

State after consulting the Policing Board. *Subsection (5)* provides that the measures will be repealed after being in place for 10 years.⁹⁹

Clause 45 is concerned with severance arrangements in the form of voluntary early retirement and early severance schemes for members of the RUC and the RUC Reserve. The *Explanatory Notes* say:

The Patten Report envisages a reduction in the overall size of the police service from 8400 officers to 7500. To achieve this reduction and to enable recruitment, approximately 4500 officers will leave the police service over a 10-year period. The Full Time Reserve (2700 officers) will be phased out. Clause 45 provides for the Secretary of State to make regulations to provide for the introduction of a time bounded voluntary early retirement and early severance scheme. It is intended that the scheme will apply to all members of the Royal Ulster Constabulary and Royal Ulster Constabulary Reserve with 5 or more years' service in the Royal Ulster Constabulary and will offer enhancements to existing pension arrangements and special compensatory lump sums. These provisions will not be subject to consultation with the Police Negotiation Board.¹⁰⁰

4. Police Oaths, Declarations and Attestations

a. England and Wales

The wording of the oath sworn by officers in England and Wales is taken from Section 29, Schedule 4 of the *Police Act 1996*. It states

I,, of, do solemnly and sincerely declare and affirm that I will well and truly serve Our Sovereign Lady the Queen in the office of constable, without favour or affection, malice or ill will; and that I will to the best of my power cause the peace to be kept and preserved, and prevent all offences against the persons and properties of Her Majesty's subjects; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all; the duties thereof faithfully according to the law.

b. Scotland

The oath in Scotland is rather different. Section 16 of the *Police (Scotland) Act 1967* states that

A person appointed to the office of constable of a police force shall on appointment make, before a sheriff (or justice of the peace), a declaration in such terms as may be prescribed concerning the proper discharge of the duties of the office.

⁹⁹ *ibid.* paragraph 57-58

¹⁰⁰ *ibid.* paragraph 59

The form of the declaration is then set out in Regulation 10 of the *Police (Scotland) Regulations 1976*, which reads:¹⁰¹

I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable.

c. Northern Ireland

Section 24 of the *Police (Northern Ireland) 1998*, which came into operation on 8 October 1998, requires members of police forces in Northern Ireland to attest as constables, by making a declaration in the following form, set out in Schedule 2:

I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable

This declaration replaced the 19th century oath of office which, while not, strictly speaking an oath of allegiance, required police constables to swear:

I (name) swear by Almighty God that I will well and truly serve our Sovereign Lady the Queen in the office of (rank) without favour of affection, malice or ill-will; that I will to the best of my power cause the peace to be kept and preserved and that I will prevent to the best of my power all offences against the same; and that, while I shall continue to hold the said office, I will faithfully, according to law, to the best of my skill and knowledge, discharge all the duties of the said office and all such duties as may be attached to said office by law and that I do not now belong to and that I will not, while I shall hold the said office, belong to any association, society, or confederacy formed for or engaged in any seditious purpose, or any purpose tending to disturb the public peace, or in any way disloyal to our Sovereign Lady the Queen and that I will not, while I shall hold the said office, engage or take part in the furthering of any such purpose, or take or administer, or assist or be present at or consent to the administering of, any oath or engagement binding myself or any other person to engage in any such purpose.

The change was recommended by the Police Authority for Northern Ireland in a report published in 1996.¹⁰² The form of the oath of office sworn by constables in Northern Ireland had originated in Section 17 of the *Constabulary (Ireland) Act 1836* and was subsequently set out in the Second Schedule to the *Constabulary Act (Northern Ireland) 1922*. A further amendment was made as a result of the *Oaths and Declarations (Repeals) (NI) Order 1973*.

The Patten report recommended that:

¹⁰¹ Statutory Instrument 1976/1073

¹⁰² "Everyone's Police" *A Partnership for Change: A Report on a Community Consultation undertaken by the Police Authority for Northern Ireland in 1995* Police Authority for Northern Ireland (1996) paragraph 5.3.20-5.3.24

There should be a new oath, taken individually by all new and existing police officers, expressing an explicit commitment to upholding human rights. The text might be as follows –

“I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable, and that in so doing I will act with fairness, integrity, diligence and impartiality, uphold fundamental human rights and accord equal respect to all individuals and to their traditions and beliefs.”¹⁰³

d. *The Police (Northern Ireland) Bill: Clause 36*

Clause 36 of the Bill is designed to provide the following new form of the declaration made by recruits, in front of a justice of the peace, on their appointment to the police force:

I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all individuals; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof according to law.

Recruits will assume the powers of a constable on making the declaration but under new arrangements introduced in Clauses 37 and 38 of the Bill they will be required to complete their training successfully before doing so.

5. *Registration of Associations*

Clause 47 of the Bill is intended to require members of the police force to inform the Chief Constable of any registrable associations they have. Membership of the following organisations, listed in Clause 47(1), is expressly taken to amount to a registrable association:

- (a) the Ancient Order of Hibernians;
- (b) the Apprentice Boys of Derry;
- (c) the Independent Loyal Orange Institution;
- (d) the Masonic Lodge;
- (e) the Orange Order; or
- (f) the Royal Black Preceptory.

¹⁰³ *A New Beginning: Policing in Northern Ireland – The Report of the Independent Commission on Policing in Northern Ireland* recommendation 2. See also paragraph 4.7

The Secretary of State will be able to make orders amending this list. The Explanatory Notes comment that:

The listed associations are those specifically mentioned by the Northern Ireland Affairs Committee in its report on the "Composition, Recruitment and Training of the RUC" (published in July 1998)¹⁰⁴ which inquired into the question of registration of interests by police officers.¹⁰⁵

Clause 47 seeks to make it an offence punishable by a fine of up to £5,000 for a member of the police force to provide false information about his or her registrable associations. It also seeks to place safeguards on the handling and disclosure of registered information and. Wrongful disclosure by any person of information received by the Chief Constable under this provision will be an offence punishable by a fine of up to £5,000.

C. The name of the RUC, emblems and flags

The cap badge worn by RUC officers takes the form of a harp topped by a crown. A crown is incorporated in the crest of 41 of the 43 Home Office police forces in England and Wales and in the cap badge of all 43 forces.¹⁰⁶ The crest of the Scottish police service incorporates the Crown and the 8 Scottish police forces have a common cap badge incorporating a representation of the Scottish police service crest. Of the 8 Scottish forces, 2 also have individual crests in the form of a coat of arms incorporating the Crown.¹⁰⁷

The RUC is the only regional police force within the UK that has the prefix "Royal".¹⁰⁸ The names of some of the smaller, non-Home Office forces in England and Wales, such as the Royal Parks Police, which is responsible for policing inside the Royal Parks, the Royal Botanic Gardens Constabulary, which has a similarly limited jurisdiction, the Royal Marines Police, Royal Military Police, Royal Naval Regulating Branch and Royal Air Force Police, have the same prefix. In a number of British colonies police forces were also given the title "Royal". These include the Royal Hong Kong Police, as the police force in Hong Kong was formerly known, and the Royal Canadian Mounted Police (RCMP).

In Canada, the name of the Quebec police service, which is not the RCMP, was changed in 1968. Its badge was also changed in 1970 from a crown and lion to a single fleur-de-lis

¹⁰⁴ *Composition, Recruitment and Training of the RUC* Northern Ireland Affairs Committee Third Report Session 1997-98 HC 337 2 volumes

¹⁰⁵ *Explanatory Notes* paragraph 47

¹⁰⁶ HC Deb 15 May 2000 c53W

¹⁰⁷ HC Deb 16 May 2000 c97W

¹⁰⁸ In his book *The Royal Irish Constabulary: An oral history* (1990) at p.1 John Brewer suggests that the RUC's predecessor, the Royal Irish Constabulary, was first given the prefix "Royal" in 1867 in recognition of its action in containing civil unrest in what is referred to as the Fenian Uprising.

emblem. In a letter to Michael Howard on 9 May 2000 the Northern Ireland minister, Adam Ingram said of the change to the badge that:

I am told the change was aimed at appealing to Quebec nationalists. So not only did the badge change, but it was done in a way to recognise the identity of the people being policed.¹⁰⁹

Section 2 of the *Police (Northern Ireland) Act 1998*, which sets out the general function of the Police Authority for Northern Ireland, requires the Authority to

secure the maintenance of the police force in Northern Ireland which shall consist of-

- a) the Royal Ulster Constabulary
- b) the Royal Ulster Constabulary Reserve

Section 2(2) goes on to say:

The police force, traffic wardens and the police service staff of the Police Authority shall form a single service which shall be known as the Northern Ireland Police Service.

This part of section 2 of the 1998 Act has not yet been brought into force.

The Patten report commented that:

Many people in Northern Ireland from the Irish nationalist and republican tradition regard the name, badge and symbols of the Royal Ulster Constabulary as associating the police with the British constitution and state. This contributes to the perception that the police are not their police. On the other hand, many people in Northern Ireland from the unionist tradition consider it perfectly natural that a service provided and funded by the state should signal its provenance. The problem is that the name of the RUC, and to some extent the badge and the uniform too, have become politicised – one community effectively claiming ownership of the name of “our” police force, and the other community taking the position that the name is symbolic of a relationship between the police and unionism and the British state. The argument about symbols is not an argument about policing, but an argument about the constitution.

Where a police service operates in part of a country in which virtually all of the people share the same constitutional allegiance, there is no real difficulty when the police adopt a name or symbols reflecting that allegiance. But in Northern Ireland, where the constitutional aspirations of the inhabitants conflict, the use of words or symbols perceived to associate the police with one side of the constitutional argument must inevitably go some way to inhibiting the

¹⁰⁹ DEP 00/807

wholehearted participation in policing of those who espouse the other side of that argument.

In Chapter 1 we quoted the reference in the Agreement to “the opportunity for a new beginning to policing Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole”. In our judgment that new beginning cannot be achieved unless the reality that part of the community feels unable to identify with the present name and symbols associated with the police is addressed. Like the unique constitutional arrangements, our proposals seek to achieve a situation in which people can be British, Irish or Northern Irish, as they wish, and all regard the police service as their own. We therefore recommend:

- that while we have not accepted the argument that the Royal Ulster Constabulary should be disbanded, it should henceforth be named the Northern Ireland Police Service
- that the Northern Ireland Police Service adopt a new badge and symbols which are entirely free from any association with either the British or Irish states (we note that the Assembly was able to adopt a crest acceptable to all parties)
- that the Union flag should no longer be flown from police buildings
- that, on those occasions on which it is appropriate to fly a flag on police buildings, the flag flown should be that of the Northern Ireland Police Service and it, too, should be free from association with the British or Irish states.¹¹⁰

As has been mentioned earlier in this paper, the proposals in the Patten report concerning the re-naming of the RUC provoked some controversy and criticism, particularly from Unionists. The Government remained insistent, however, that a change in the name of the force was necessary.

Clause 69(3) of the *Police (Northern Ireland) Bill* is designed to give the Secretary of State the power to make an order providing a name for the police service and the police service reserve in Northern Ireland. In making such an order the Secretary of State will have to take into account any advice given him by the Policing Board. He will also have to have regard to the need to secure that the membership of the police force is representative of the community in Northern Ireland. The order will have to be approved by both Houses of Parliament under the affirmative procedure. Until it comes into force the police service in Northern Ireland is to be known as “the Police Service” and the reserve is to be known as “the Police Service Reserve”.

Clause 50 of the Bill gives the Secretary of State the power to make regulations, following consultation with the Policing Board, the Chief Constable and the Police Association:

¹¹⁰ *A New Beginning: Policing in Northern Ireland: The Report of the Independent Commission on Policing in Northern Ireland* September 1999 paragraphs 17.4-17.6

- prescribing the design of an emblem for the police force and regulating the use of that or any other emblem; and
- prescribing the design of a flag for the police force and regulating the flying or carrying of that or any other flag on land or buildings used for the purposes of the police force or otherwise in connection with the police force¹¹¹

D. Video recording of interviews

Clause 65 of the Bill is intended to amend the *Police and Criminal Evidence (Northern Ireland) Order 1989*¹¹²(PACE) to require the Secretary of State to issue a code of practice on the video-recording, with sound, of police interviews with people being questioned under legislation other than anti-terrorist legislation. The video-recording of interviews with people being questioned about terrorist offences is provided for in the *Terrorism Bill*, which is currently before Parliament. The Patten report recommended that video-recording be introduced into PACE custody suites.¹¹³

E. Guidance on plastic baton rounds and other public order equipment

Clause 49 of the Bill seeks to give the Secretary of State the power to issue guidance to members of the police force on the use of public order equipment. Any guidance issued will have to be published. The clause is particularly intended to allow the Secretary of State to issue guidance on the use of plastic baton rounds. The Patten report recommended that an immediate and substantial investment should be made in a research programme to find an acceptable, effective and less potentially lethal alternative to the plastic baton round. It also recommended that the police be equipped with a broader range of public order equipment than the RUC currently possesses, so that a commander would have a number of options at his or her disposal which might reduce reliance on, or defer resort to, the plastic baton round.¹¹⁴

F. Reactions to the Bill

Both unionists and Sinn Fein expressed concern that the issue of the name of the police service in Northern Ireland would not be resolved until after the implementation of the Bill, when it would be set out in an order made by the Secretary of State. The issue of the new name for the RUC was raised both before and after the meeting of the Ulster Unionist Council on 27 May at which the Council agreed to return to a devolved

¹¹¹ a standard briefing on the flying of flags from Government buildings is available from the Library's Parliament and Constitution Centre.

¹¹² 1989 NI 12

¹¹³ *A New Beginning: Policing in Northern Ireland: The Report of the Independent Commission on Policing in Northern Ireland* September 1999 paragraph 8.16

¹¹⁴ *ibid.* paragraph 9.15-9.16

government. The *Irish Times* reported that the leader of the Ulster Unionist Party, David Trimble, was seeking further clarification of the policing issue, while Sinn Féin's Bairbre de Brun described the news that the decision on a new name for the force could be deferred until next year as "deeply worrying".¹¹⁵

The SDLP was reported to have told the Government that there were 44 defects in the Bill. In a press release the deputy leader of the SDLP, Seamus Mallon, referred to his party's

disappointment at the failure to implement unambiguously Patten's recommendation on the name, flag and symbols of the new police service.

He continued:

The failure raises the concern that we are witnessing Government by concession. Moreover, the SDLP has immediately identified other issues of real concern in the Policing Bill. The powers of the Policing board, the centrality of human rights, the appointment of Board members, the future of the full-time reserve, the powers of the Police Ombudsman and a statutory basis of the work of the Oversight Commissioner, are core issues on which the SDLP shall seek and require from the British Government, that Patten is and will be reflected in law and delivered in practice.

In order to bring about a new beginning for policing, the legislation, the implementation plan and the work of the Oversight Commissioner must ensure that the promise of the Patten report is translated fully and faithfully into law, policy and practice. We will very carefully consider these three elements together to determine if the new beginning to policing which is required and to which the SDLP wishes to subscribe, is being delivered in full, in good time and consistent with Patten.¹¹⁶

An article in the *Guardian* on 26 May 2000 described the areas in which the SDLP claims that the Bill falls short of the proposals in the Patten report as follows:

- The "watering down" of the Patten report's proposal to abolish the name of the RUC;
- Possible changes to the Patten report's proposal for a neutral badge;
- The Government being able to decide whether or not the Union flag should fly over police buildings;
- Attestation of the new police declaration being restricted to new recruits, rather than to both new and existing officers;
- No mention in the attestation of a duty to respect traditions and beliefs;

¹¹⁵ "Mandelson fudge on RUC name slammed" – *Belfast Telegraph* 16.5.2000; "Both sides in peace process say British being ambiguous" – *Irish Times* 16.5.2000

¹¹⁶ "Concerns over Police Bill - Mallon" – SDLP press release 16.5.2000, www.sdpl.ie/PRmallon-may.htm

- The limitations on the power of the Policing Board to initiate inquiries into aspects of the police service or police conduct;
- No statutory basis for the office of Oversight Commissioner;
- No mention of the proposal in the Patten report that district policing partnerships should be able to contribute up to 3p in the pound towards local policing costs. The Bill envisages the role of the partnerships as being primarily consultative;
- No power for the Ombudsman to investigate complaints about the direction and control of the force. Section 52 of the *Police (Northern Ireland) Act 1998* places such complaints outside the jurisdiction of the Ombudsman and requires them to be referred to the Police Authority, the Chief Constable or the Secretary of State.¹¹⁷

A Sinn Féin press release quoted the party's president, Gerry Adams, as saying:

In the recent negotiations leading up to the discussions at Hillsborough, Sinn Féin raised our concerns at unionist attempts to dilute the Patten proposals on policing. The two governments made it clear to us that neither the RUC nor the Patten proposals would form part of those negotiations.

The two governments (in their letter to party leaders on 6 May 2000) committed themselves to the implementation of the Patten proposals. Today's Policing Bill does not fulfil that commitment. In fact, it represents a major departure from the Patten Report on some of the most important issues.¹¹⁸

In its preliminary commentary on the Bill the Northern Ireland pressure group Committee on the Administration of Justice (CAJ) said the Bill failed to give legal effect to the Patten report's detailed recommendations or to the Government's commitment to implement them.¹¹⁹ It said that while the main public focus had been on issues of the name, emblem and other symbols of policing there were what it termed "serious failings in the area of democratic accountability and human rights. CAJ said that although the civil oversight body had always been the weakest element in the tripartite structure of policing in Northern Ireland and the element which most needed reinforcing, the Bill's clarification of existing roles had in fact resulted in extensive powers being assigned away from the Policing Board to the Secretary of State or the Chief Constable. CAJ felt that without sufficient powers it was difficult to see how the new Board could secure the right calibre of membership to ensure effective democratic accountability. It was also concerned about the restrictions on the Board's power to call for inquiries and reports.

¹¹⁷ "Where nationalists and the government take issue on the future of Ulster policing" – *Guardian* 26.5.2000.

¹¹⁸ "Gerry Adams responds to Patten policing legislation" – Sinn Féin press release 16.5.2000 <http://sinnfein.ie/releases/00/pr051600.html>

¹¹⁹ "Measuring the 'Patten' legislation against the Patten recommendations" – CAJ preliminary commentary 19.5.2000

CAJ also expressed concern about the lack of a power for the Ombudsman to initiate inquiries, the exclusion of complaints about the direction and control of the police force from the Ombudsman's jurisdiction under the 1998 Act and the proposed time limits, which would prevent the Ombudsman investigating old cases. CAJ also felt that the Ombudsman should have unfettered access to information.

CAJ also felt that the Bill failed properly to reflect "the centrality given to human rights by Patten" by restricting the requirement to attest the new declaration to new recruits and failing to refer to any human rights standards beyond the *Human Rights Act 1998*. It also noted what it saw as a number of defects in the proposed activities of the Oversight Commissioner, which are set out in the Implementation Plan, which has yet to be published.

The Police Authority for Northern Ireland suggested that the Police Bill would give the new Policing Board less power than the Police Authority currently had and render it ineffective. It considered that in matters of police planning and financial control the Board would have a reduced role, while the Secretary of State enjoyed greater influence. In criticising the restrictions on the power of the Board to initiate inquiries the Authority said it was difficult to see how the Board could ever satisfy all the conditions required by the Secretary of State. It added:

This is not the first time that Government has attempted to control policing in Northern Ireland. In our original submission to the Patten Commission we catalogued consistent attempts by Government over the years to suppress the powers of the Police Authority.

Successive Authorities have resisted such attempts by Government to directly influence policing and we will continue to do so in guarding against any weakening of the powers envisaged by Patten for the new Policing Board.¹²⁰

The Police Authority Chairman, Pat Armstrong, added that the Authority supported much of the legislation including the apparent safeguards put in place to prevent district policing partnerships raising money for 'freelance' police services. He added that more time would be needed to examine all the issues in detail.¹²¹

The *Belfast Telegraph* also reported criticisms of the Bill from the Police Ombudsman, Nuala O'Loan, quoting her as saying the Bill would require some amendment concerning her powers, particularly the Ombudsman's power to obtain information and documents from the Policing Board and the Chief Constable. She also hoped that her investigative and consultative roles would be increased.¹²²

¹²⁰ "Police Bill looks set to render Policing Board ineffective" – Police Authority for Northern Ireland press release 19.5.2000

¹²¹ *ibid.*

¹²² "Ombudsman joins Police Bill criticisms" – *Belfast Telegraph* 23.5.2000

The Labour MPs Kevin McNamara, Maria Fyfe, John McDonnell and Dr. Norman A. Godman have tabled a reasoned amendment saying that the House should decline to give the Bill a second reading because:

the Bill does not provide for full democratic accountability, will not lead to the creation of a police service capable of attracting and sustaining support from the community as a whole, fails to reflect the determinations of the Patten Commission, thus not fulfilling the Good Friday Agreement commitment to provide a new beginning to policing in Northern Ireland, does not recognise full and equal legitimacy and worth of the identities, senses of allegiance and ethos of all sections of the community in Northern Ireland and does not give adequate recognition to the role of human rights protection in informing the ethos of the new service.

Appendix: Statement by the Secretary of State for Northern Ireland on the Patten Report

House of Commons Debates 19 January 2000 c845-848

The Secretary of State for Northern Ireland (Mr. Peter Mandelson): With permission, Madam Speaker, I would like to make a statement on the Government's decisions on the report of the Independent Commission on Policing in Northern Ireland, known as the Patten report after its chairman, Chris Patten.

Of all the issues that have divided society in Northern Ireland, policing is probably the most controversial. In the past 30 years, the Royal Ulster Constabulary has faced demands completely unlike those faced by any other force in the United Kingdom or, indeed, elsewhere in the developed world. I would like to place on record the Government's deep admiration for the courage, resilience and professionalism with which the RUC has met these challenges. The accounts that I have heard of personal tragedy, pain and loss in the RUC family are profoundly moving and humbling. Three hundred and two officers have been killed, and many thousands injured. We all owe the RUC a huge debt of gratitude. The George Cross is a fitting acknowledgement of its sacrifice.

However, in rising to the challenge, the RUC has inevitably, if unfairly, become identified more with one side of the community than the other. It finds it hard to recruit from the nationalist community and, with 88 per cent. of its members Protestant and only 8 per cent. Catholic, is not representative of all sides of the community. That is not a desirable state of affairs. The RUC itself is forward looking and accepts the need for change. It is eager to police a normal society in a normal, professional way, but it is held back by the burden of history.

The talks which led to the Good Friday agreement addressed but did not resolve these problems. Instead, Chris Patten and his colleagues were asked to design arrangements for "a police service that can enjoy widespread support from, and is seen to be an integral part of, the community as a whole."

The Patten commission rose to this challenge and I pay tribute to it. Its report covers, among other things, composition, training, culture, ethos and symbols. My right hon. Friend the Member for Redcar (Marjorie Mowlam) accepted the report in principle, and launched a period of consultation about the details. Since my own appointment, I have met all the interested parties and police groups--some more than once--and have listened very carefully indeed to what they had to say.

The decisions that I am announcing today will be reflected in legislation which we will bring forward later in the Session. In reaching them, I have been driven by, and have tried to keep in balance, three distinct but interdependent considerations: representativeness, effectiveness, and respect for the sacrifices of the past. I say "interdependent" because only a police service that is accepted and draws members from both traditions and is therefore accepted throughout the community can hope to be fully effective. It is only by

recognising the sacrifices of the past that we can move forward together to meet the challenges of the future. I am determined that the police in Northern Ireland should be modern, representative and effective, and no longer the fulcrum of antagonistic debate. However, Patten also points out that the implementation of some recommendations will

"depend to a greater or lesser degree on how the security situation develops", and that judgments will need to be made on how and when they should be introduced. That is advice that the Government will, rightly, keep firmly in mind as we take the process forward.

Patten rightly places much emphasis on human rights. The Chief Constable and the new Policing Board together will be made responsible for developing and implementing a comprehensive programme of action, including an audit to ensure full compliance with human rights requirements.

We also accept a new police oath as proposed by Patten, which will be taken by all new recruits to the police service. I do not believe that it would be appropriate for already attested officers to take the new oath, which would in any case raise significant legal difficulties. All officers will, however, receive human rights training and will be required to behave in accordance with a code of ethics. That code will be provided for in legislation and will, like the new oath, emphasise the priority to be given to human rights.

The Government accept Patten's recommendation for the creation of a new Policing Board composed, as the report recommends, to replace the current Police Authority. The new Policing Board will be responsible for securing the maintenance of an efficient and effective police service and holding the Chief Constable and the police service to account.

I am sure that the House will wish to join me in paying tribute to the work of the Police Authority over the past 30 years. Many have served with distinction on the authority and were prepared to come forward even when there was a direct terrorist threat against them. Two members of the authority were murdered by terrorists. The contribution of the authority, its members and staff will not be forgotten.

The report recommends clarifying the roles of the Secretary of State, the Chief Constable and the Policing Board. The broad thrust of the recommendations is that the Policing Board should play a more developed role, setting objectives, priorities and performance targets, while leaving operational control and direction of the police firmly in the Chief Constable's hands.

I entirely agree with the report that the new Policing Board

"should be empowered and equipped to scrutinise the performance of the police effectively".

I therefore accept the recommendations and will introduce legislation accordingly, subject to the Chief Constable continuing to answer to me on all matters involving national security and the work of relevant agencies.

Patten proposed the creation of district policing partnership boards to provide an element of local accountability. He envisaged that they should have a primarily consultative role,

with an ability to monitor police delivery against an agreed local plan, and I endorse that. He also proposed an additional community safety role, with powers to purchase services on top of normal policing. The latter activity is currently a subject being considered by the criminal justice review. Until decisions are taken on the review, which will be published shortly, I do not intend to extend their function in that way. It will be better, in any case, to concentrate initially on building up relationships at the local level, in what I propose to call district policing partnerships. I also intend to consider further the arrangements proposed for Belfast, where I am not satisfied that it would be right to have four separate partnerships.

Progress on the style of policing and the size of the police service will be critically dependent on the Chief Constable's assessment of the security threat and the public order situation. There will be no question of rushing forward with changes in the absence of a stable security environment. Subject to that overall proviso, in line with the report, the Chief Constable has decided to re-organise the police service into district commands based on district council areas and geared towards policing in partnership with the community. District commanders will have much higher levels of devolved authority under the overall command of the Chief Constable, who intends this structural reorganisation to be under way by November.

The Chief Constable will also re-organise police headquarters to produce a slimmer structure. Headquarters will, in future, take a more strategic approach to management. Special Branch and CID will be retained and placed under a single Assistant Chief Constable, as the Chief Constable believes is desirable, when the security situation permits.

The Government accept Patten's recommendations on the future size of the police service--a regular complement of 7,500 full-time officers--provided, as the report says, that the security situation does not deteriorate significantly. We accept Patten's recommendation for the enlargement of the part-time Reserve and the discontinuation of the full-time Reserve. Again, that is subject to the security situation.

The severance arrangements to enable serving police officers, whether regular or reservist, to leave the police service will be generous and sympathetic. The Government are committed to finding the necessary resources. Negotiations with the police staff associations are currently in progress. I hope that those discussions will help all sides to agree arrangements that will address officers' understandable concerns about their future.

I attach particular importance to Patten's recommendations for action to transform the composition of the police service. They are essential to gaining widespread acceptability. I endorse the proposal for 50:50 recruitment of Protestants and Catholics, from a pool of candidates, all of whom--I stress this--will have qualified on merit. We propose that the requirement for that special measure should be kept under review on a triennial basis, with rigorous safeguards to ensure that the rightly challenging targets for recruitment do not diminish the standard required of recruits. There will be no question whatever of ex-terrorists joining the service.

Our aim is to develop a police service that is both effective and accepted throughout the community. That aim, as Patten recognises, clearly bears on the name and symbols of the RUC. The issue is not whether the name of the RUC is wrong or something of which people should not be proud. I understand exactly why serving and former officers, their families and, indeed, widows are proud of the RUC and its name. The issue is whether a change in name, underlining a new start, is a necessary and indispensable part of attracting balance in recruits to the new police service.

Of course, the name is not the only barrier to recruitment. At times, there has been disgraceful intimidation of nationalists who wished to join the RUC. However, a change of name was, in Patten's view, essential, and I agree.

That change is needed to signal the new beginning, which will be symbolised in particular by the arrival in the new training environment of the first recruits entering through the new independent procedures and selected on the new balanced basis. That point will come in the autumn next year. At that point, too, I will bring into force the new title, which will be the Police Service of Northern Ireland, a name that I believe is preferable to that proposed by Patten.

At the same time, a service badge incorporating this title will be introduced after the new Policing Board has had a chance to address the issue. In that context, the RUC will wish to consider how best permanently to record the award to them of the George Cross last autumn. Existing police memorials will remain as they are, and the colour of the uniform will not change.

The Government also accept Patten's important recommendation for information technology improvements to put the police in Northern Ireland at the forefront of communications and information technology, and for police training. I am also delighted to tell the House that we have accepted the case for a new police college, and appropriate resources will be provided. Those measures are in addition to a range of other forward-looking recommendations on practical policing issues, which, although I will not detain the House by detailing them here, we will also implement.

Finally, Patten recommends the appointment of an oversight commissioner to monitor the implementation of those changes, which have been agreed by the Government. That appointment will not in any way cut across the responsibilities of either the new Policing Board or the Chief Constable, and the accountability that I and my colleagues have to the House on policing issues will not diminish as a result. The oversight commissioner will help to create a first-rate police service for the future.

The implementation of those changes will entail a major and challenging programme of work for the Government, the Chief Constable, the Police Authority and, in due course, the Policing Board, but, most of all, for police officers themselves. This is not an overnight event, but a process of change that will extend over several years. I am confident that the police will meet the challenge of change positively and with commitment.

For those in the Unionist community who have fears, I urge them to accept the need for significant change to create a police service in which all can feel that they belong and with which all can identify. To nationalists who have for so long withheld their support from the police in Northern Ireland, I would ask them to reflect on the transformation that is planned and to reconsider their position. It is now time for them to support this programme of change, unambiguously to support the police and to encourage young men and women from their community to join the police. The prize is a modern, effective police service drawing support and strength from all parts of the community. It is within our grasp. The proposals I have announced today should enable us to achieve it.

Appendix: The D'Hondt process

The D'Hondt formula is described in the following extract from the Home Office website:

Political parties will put forward lists of candidates in their preferred order. Individual independent candidates will also be able to stand. On election day, voters will cast one vote. They can vote either for a party list or for an independent candidate. The ranking order of candidates on a party list cannot be changed.

On completion of the poll, votes for each individual candidate and each party will be counted. The first seat will be allocated to the individual or party with the highest number of votes. If the seat is allocated to a party, it will go to the first candidate on that party's list. The second seat will be allocated in the same way except that if the first seat was allocated to a party, that party's total will be divided by two. The process will continue until all the seats are allocated. At all stages, parties' original totals are divided by the number of seats that party has already been allocated, plus one. If a party wins more than one seat, its candidates will be elected in the order in which they appear on the party list.

Worked Example

The following example shows how the seats would be allocated in a seven-member region with one million votes cast:

Stage 1

Party A (total) 380,000
Party B (total) 300 000
Party C (total) 180 000
Independent candidate 140 000

The first seat is allocated to the candidate at the top of the Party A list.

Stage 2

Party A (divided by 2) 190 000
Party B 300 000
Party C 180 000
Independent candidate 140 000

The second seat is allocated to the candidate at the top of the Party B list.

Stage 3

Party A (divided by 2) 190 000
Party B (divided by 2) 150 000
Party C 180 000

Independent Candidate 140 000

The third seat is allocated to the candidate in second place on the Party A list.

Stage 4

Party A (divided by 3) 126 666

Party B (divided by 2) 150 000

Party C 180 000

Independent candidate 140 000

The fourth seat is allocated to the candidate at the top of the Party C list.

Stage 5

Party A (divided by 3) 126 666

Party B (divided by 2) 150 000

Party C (divided by 2) 90 000

Independent candidate 140 000

The fifth seat is allocated to the candidate in second place on the Party B list.

Stage 6

Party A (divided by 3) 126 666

Party B (divided by 3) 100 000

Party C (divided by 2) 90 000

Independent candidate 140 000

The sixth seat is allocated to the independent candidate.

Stage 7

Party A (divided by 3) 126 666

Party B (divided by 3) 100 000

Party C (divided by 2) 90 000

The seventh seat is allocated to the candidate in third place on the Party A list

Final result

Party A 3 seats

Party B 2 seats

Party C 1 seat

Independent Candidate 1 seat¹²³

¹²³ <http://www.homeoffice.gov.uk/elections/listhow.htm>