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# *The Police Reform Bill*

## [HL]

**Bill 48 of 2001-2002**

This paper describes the background to the introduction of the *Police Reform Bill*, which is currently in Committee in the Lords. The Bill takes forward the agenda for police reform set out in the Government's white paper *Policing a New Century: A Blueprint for Reform*.

The paper contains a summary of the Bill's various provisions and describes some of the relevant policy issues. It seeks to highlight particular areas of controversy and some of the reaction both to the white paper and to the Bill itself. A summary of the Lords' deliberations up to the Committee stage is offered.

There is as yet no date for the Bill to reach the Commons. A further update will be provided in time for second reading.

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## Summary of main points

The Police Reform Bill [Bill 48 of 2001-2002] takes forward the agenda for police reform set out in the Government's white paper *Policing a New Century: A Blueprint for Reform*.

Although it is not as wide-ranging in its scope as the white paper, the Bill covers a number of issues, centred around the powers of the Secretary of State; police powers (including the exercise of police powers by civilians); complaints and misconduct; the removal, suspension and disciplining of police officers; nationality requirements for appointment as a police constable; the police attestation of office and various matters relating to the British Transport Police and Ministry of Defence Police.

Although many of the proposals in the white paper and their corresponding provisions in the Bill have been welcomed, the Bill has also attracted some controversy. In particular, there has been much debate about the proposed new powers for the Home Secretary to intervene in the management of police forces, with suggestions that this would erode the balance of power within the tripartite relationship between police forces, police authorities and the Home Secretary.



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## I Enforcing the Law: Duties and Powers

### A. Chief constables

The organisation and management of police forces in England and Wales other than the Metropolitan Police and the City of London Police are matters in which the Home Secretary, chief constables and police authorities have what is often referred to as a "tripartite relationship" involving different but inter-connecting responsibilities. The *Police and Magistrates' Courts Act 1994*, the main provisions of which came into force in April 1995, significantly altered these responsibilities, which are summarised below. The provisions have since been consolidated in the *Police Act 1996*.

Section 10 of the *Police Act 1996* gives chief constables responsibility for the direction and control of their respective police forces. In discharging his or her functions a chief constable must, however, have regard to the local policing plan issued by the police authority for the force concerned. Sections 5-7 and 17 of the *Crime and Disorder Act 1998* require the police and local authorities to work together and with other key agencies and the community in drawing up "crime and disorder audits" and developing strategies for reducing crime and disorder in the local area.

There is case law to suggest that, although under a general duty to uphold the law, chief officers of police retain discretion as to the degree of effort they will attach to enforcing any particular law at any particular time. The case of *R v Metropolitan Police Commissioner, ex parte Blackburn (1980)*<sup>1</sup> centred on the application by a private individual for an order of mandamus to compel the police to enforce the law on obscene publications. It was, however, held that the police were doing their best in a difficult situation to enforce the law with the resources available to them and there was no justification for the courts to interfere. The appeal was therefore dismissed.

A more recent case touching on these issues was *R v Chief Constable of Sussex, ex parte International Trader's Ferry Ltd (1998)*.<sup>2</sup> Here, it was held that, having regard to the chief constable's lack of resources, it was not unlawful - whether viewed from a domestic or European perspective - for the police to refuse to provide a police presence for more than two days a week, to protect the applicant's lorries from animal protesters and ensure the delivery of livestock to Shoreham Harbour. It was held that the right claimed here (that is, to trade lawfully) was not an absolute right by which the chief constable owed a duty to protect the trader at whatever cost and in whatever way necessary. In a situation where there were conflicting rights and the police had a duty to uphold the law, the police

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<sup>1</sup> *R v Metropolitan Police Commissioner, ex parte Blackburn (1980)* TLR 7.3.80

<sup>2</sup> *R v Chief Constable Of Sussex, ex parte International Trader's Ferry Ltd (1998)* LTL 11/11/98 : TLR 16/11/98 : (1998) 3 WLR 1260 : (1999) 1 AER 186

might, in deciding what to do, have to balance a number of factors and in so doing exercise their judgement and discretion. Although the courts would readily review the way in which decisions were reached, they would respect the margin of appreciation or discretion which a chief constable had. The chief constable carried out the required balancing exercise and had not been shown to have ignored relevant facts or taken account of irrelevant factors in a way which vitiated his overall decisions. These decisions had not been shown to be unreasonable in a *Wednesbury* sense.<sup>3</sup>

## B. Patrolling police officers

Although drawn up for the Metropolitan Police, the *Principles of Policing and Guidance for Professional Behaviour* attempt to address some of the philosophical and constitutional issues of policing. For example, they state that<sup>4</sup>

The primary aims and duties of the Metropolitan Police are to uphold the Rule of Law, to protect and assist the citizen and to work for the prevention and detection of crime and the maintenance of a peaceful society, free of fear of crime and disorder. They will carry out these aims and duties in consultation and co-operation with others in the community.

The *Guide for Professional Behaviour* points out the importance of discretion and offers the following advice, for example, on dealing with minor offences:<sup>5</sup>

On the one hand, for instance, if you were to decide to take an offender before the court for a minor offence in respect of which there were mitigating circumstances, either known to you or to be discovered by simple enquiry, you may be sure you would attract disfavour ... On the other hand, a decision by you not to take any action in circumstances where reasonableness demands clearly that you should do so, can amount to a neglect of duty under the discipline code. In exceptional circumstances, your inaction could amount to a crime - that of neglect by a public officer - if you fail unreasonably to prevent a crime.

Police officers in the United Kingdom are not, therefore, obliged to take action in connection with particular breaches of the law and must rely on their judgement and discretion. In the context of public disorder, for example, the exercise by the police of their powers may necessitate on-the-spot assessments of potentially complex subjects, such as the ownership of land (as a prerequisite of judging whether or not a person is a "trespasser") or whether to

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<sup>3</sup> *Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223*, in which the test of reasonableness was established. To summarise broadly, even if an authority has the power to do something it can only exercise that power in a reasonable way and, if it behaves unreasonably in exercising its powers, the courts may intervene.

<sup>4</sup> *The Principles of Policing and Guidance for Professional Behaviour* (1985) Metropolitan Police: page 9

<sup>5</sup> *ibid*: page 23

use force against large numbers of people, including women and children. In that situation, the police may well prefer to find an alternative means of resolving the matter rather than risk alienating the local community.

The creation of new police powers or criminal offences does not in itself provide assistance in resolving these dilemmas, which arise from consideration of the principle of "policing by consent" on which policing in Britain has tended to be based. As noted above in the case of *R v Chief Constable of Sussex, ex parte International Trader's Ferry Ltd (1998)*, the courts have generally been reluctant to involve themselves in assessing the exercise by the police of their discretion. Legal challenges to the police over the exercise of their discretion in enforcing the criminal law have generally been unsuccessful.

### **C. The Home Secretary**

The Home Secretary has a general duty under section 36 of the *Police Act 1996* to exercise his powers under the Act in such manner and to such extent as appears to him to be best calculated to promote the efficiency and effectiveness of the police. He has powers under section 37 of the 1996 Act to make orders determining objectives for the policing of the areas of all police authorities, following consultation with representatives of those authorities and the chief constables concerned. Where these objectives have been determined, the Home Secretary also has powers under section 38 of the same Act to direct police authorities to establish performance targets. The directions may be given to all police authorities or to one or more particular authorities and may impose conditions with which the performance targets must conform. Different conditions may be imposed for different authorities. The Home Secretary also has powers under the same Act to issue codes of practice concerning the discharge by police authorities of their functions.

Under section 40 of the 1996 Act, the Home Secretary may require the inspectors of constabulary to carry out an inspection of any police force. Where the inspectors report that the force is not efficient or effective, or that it will cease to be efficient or effective if remedial measures are not taken, the Home Secretary may direct the police authority concerned to take such measures as may be specified in the direction. These may include the specification of a minimum budget for the authority.

The Home Secretary has powers under section 43 of the *Police Act 1996* to require any police authority to submit reports to him on any matters connected with the discharge of its functions or the policing of its area as may be specified in the requirement. Under section 44 of the 1996 Act he may also require a chief constable to submit a report to him on any specified matters connected with the policing of the chief constable's area. Section 49 of the same Act enables him to cause a local inquiry to be held by any person appointed by him into any matter connected with the policing of any area.

Section 46 of the 1996 Act enables the Home Secretary to make grants for police purposes to police authorities for each financial year. For each financial year he must determine, with

the approval of the Treasury, the aggregate amount of grants to be made under the section and the amount of grant to be made to each authority. In determining the allocation among police authorities of the whole or any part of the aggregate amount of grants, the Home Secretary may exercise his discretion by applying such formulae or other rules as he considers appropriate. The considerations taken into account in deciding the amount of grant to be made to each authority, and the formulae and other rules used, may be different for different authorities or classes of authority. The Home Secretary also has powers under section 47 of the 1996 Act to make grants to police authorities in respect of capital expenditure. He may also make grants to them under section 48 of the same Act in respect of expenditure incurred in connection with safeguarding national security.

#### **D. Police Authorities**

Before the implementation of the *Police and Magistrates' Courts Act 1994*, two-thirds of the members of a police authority were required to be local councillors for the area covered by the force, and one-third were magistrates. The 1994 Act provides for most police authorities to have seventeen members, nine of whom are councillors, while three are magistrates. The remaining five independent members are appointed by a three-member selection panel, from a short-list prepared by the Home Secretary. (The designated members of the police authority appoint one member of this selection panel, the Home Secretary appoints another and these two members then appoint the third). The Home Secretary has powers under section 4 of the *Police Act 1996* to make orders increasing the membership of a police authority to a number greater than seventeen. An order increasing the number of members of the South Wales Police Authority from seventeen to nineteen came into force on 1 January 1999.<sup>6</sup>

The 1994 Act constituted all police authorities as free-standing corporate bodies with their own standing spending assessment (SSA) and individual capping levels. Each one has a statutory responsibility under the Act for securing the maintenance of an efficient and effective police force for its area. Section 7 of the *Police Act 1996* requires every police authority to set annual local policing objectives, after consulting the chief constable, and to issue a local policing plan for the area covered by the force. Every authority is also required to issue a report on the policing of its area in the previous year. In exercising its functions, the authority is required to have regard to any objectives determined by the Secretary of State, any local objectives or performance targets which it has established and any code of practice issued or directions given by the Home Secretary under the Act.

Section 96 of the *Police Act 1996* requires police authorities to make arrangements for obtaining the views of people in the area covered by their police force about matters concerning the policing of the area and for obtaining their co-operation with the police in

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<sup>6</sup> SI 1998/3215

preventing crime in the area. Police authorities outside London are required to consult with their chief constables about what arrangements would be appropriate.

Section 11 of the *Police Act 1996* gives individual police authorities the power to appoint the chief constables of the forces for which they are responsible, subject to the approval of the Home Secretary. A police authority also has the power under this section of the Act to call upon its chief constable to retire in the interests of efficiency or effectiveness, although once again it must obtain the approval of the Home Secretary. Section 42 of the 1996 Act gives the Home Secretary powers to require a police authority to exercise its powers under section 11 to call upon the chief constable to retire in the interests of efficiency and effectiveness.

## **E. Her Majesty's Inspectorate Of Constabulary**

Section 54 of the *Police Act 1996* provides that

(2) The inspectors of constabulary shall inspect, and shall report to the Secretary of State on the efficiency and effectiveness of, every police force maintained for a police area

(3) The inspectors of constabulary shall carry out such other duties for the purpose of furthering police efficiency and effectiveness as the Secretary of State shall from time to time direct.

The Home Office website<sup>7</sup> notes that

The Inspectorate is responsible for carrying out inspections of provincial police forces under the Police Act 1964. It promotes collaboration between forces. It encourages the application of up-to-date techniques and the results of central police research.

Her Majesty's Inspectorate of Constabulary therefore oversees individual forces, rather than managing them. Although Her Majesty's Inspectorate of Constabulary might in some circumstances criticise a police force for the way in which it has gone about the policing of an area it can (broadly speaking) only offer advice. Likewise, it can advise the Home Secretary on whether a police force is efficient and effective.

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<sup>7</sup> [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

## F. The Association Of Chief Police Officers

Robert Reiner argues that ACPO, with the encouragement of the Home Office, has done much to speed the process of standardising and centralising the police, as a co-ordinating body between the Home Office and individual chief constables.<sup>8</sup> ACPO has, for example, commissioned various reviews of training in operational areas such as vehicle pursuits and first aid and has worked with National Police Training to develop training curricula and courses which can be made available across the police service. Even so, this is still not a managerial relationship. ACPO can exhort and encourage but has no formal power to require any chief officer to comply with its policies.

Press reports in October 2001 suggested that ACPO wished to assume a statutory role in formulating operational policing policy, as a means of protecting chief constables from political interference:<sup>9</sup>

[...]

Part of a ACPO policy document released yesterday, entitled Policing in the 21st Century, A Programme for Change, states that more than 50 years after its inception in 1948, ACPO "continues to uphold the strong tradition of local policing and to underline the importance of maintaining the independence of Chief Constables to undertake policing operations free from political direction".

[...]

An ACPO spokesman yesterday characterised the proposed new ACPO as an "intermediary body" between the Government and forces, to "work alongside and consult with Government while maintaining the all-important operational independence".

[...]

The president of ACPO, Sir David Phillips QPM observed that the police in the United Kingdom were not an operational arm of the ministry of the interior - as they might be in other countries - and it was crucial that that independence should be maintained:<sup>10</sup>

[...]

In publishing the association's response to the plan, Sir David stressed the importance of police independence and predicted attempts to make chief constables more answerable to the Home Office would be unworkable.

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<sup>8</sup> Robert Reiner (1992) *The Politics of the Police*: Second edition : Hemel Hempstead, Wheatsheaf

<sup>9</sup> "Police Chief 'Club' May Become Closed Shop" *Daily Telegraph* 20 October 2001

<sup>10</sup> "Police Chiefs Offer Reform Alternative" *Guardian* 20 October 2001

"If I'm facing a major riot I can't be phoning the Home Office to see if I should take this approach or that approach," said Sir David, who is chief constable of Kent. "My operational independence is a guarantee of the independence of the constable on the beat, so constables can act without feeling constrained.

## II Complaints against the Police

### A. England and Wales

Provision for the handling of complaints against the police in England and Wales is currently made in Part IX of the *Police and Criminal Evidence Act 1984* and its associated regulations. The 1984 Act abolished the Police Complaints Board established under the *Police Act 1976*. The Police Complaints Authority was set up in its place on 29 April 1985. Part IV of the *Police Act 1996* consolidated the 1984 Act and the amendments made under the *Police and Magistrates' Courts Act 1994* which allow for the introduction of new police personnel procedures.

The Police Complaints Authority (PCA) publishes a useful leaflet describing the procedure for making a complaint against the police in England and Wales.<sup>11</sup> The Home Affairs Committee (HAC) examined the police complaints system in England and Wales in 1997.<sup>12</sup>

#### 1. Recording, handling and investigation of complaints

On pages 143-144, the Home Office memorandum of evidence to the HAC set out the current position on defining complaints and dispensations.<sup>13</sup> Briefly, a "complaint" is any complaint about the conduct of a *police officer* and not about *the direction and control of a police force*. By implication, this would seem to require the complainant to be able in some way to identify the officer about whom they are complaining.

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<sup>11</sup> *Making Your Complaint Against the Police* Police Complaints Authority [undated]

<sup>12</sup> *Police Disciplinary and Complaints Procedures* First Report from the Home Affairs Committee Session 1997-98 HC 258-I; HC 258-II

<sup>13</sup> To be found in *Police Disciplinary and Complaints Procedures* First Report from the Home Affairs Committee Session 1997-98 HC 258-II

In his announcement of the Government's response to the HAC, the then Home Secretary Jack Straw said:<sup>14</sup>

Many people make a complaint about the police, which, for one reason or another, is not then recorded. The Committee proposes a relatively straightforward change to the recording of complaints, which would make the current system more responsive to public concerns. It suggests that all representations that could constitute a complaint should be registered by the police, with a right of appeal to an independent body for the complainant where there is a disagreement; and that it should be possible for a complaint to be registered directly with the PCA in certain circumstances. I accept those recommendations.

Section 85 of the *Police and Criminal Evidence Act 1984* provides that, once a complaint has been recorded, the chief officer of police must first consider whether it should be resolved informally.<sup>15</sup> This means of dealing with complaints was intended to create a simple and flexible procedure for dealing with less serious complaints: the Home Office memorandum notes that the guidance issued to the police asserts that the procedure is appropriate "where it is clear from the outset that any alleged conduct is one which, if proved to have occurred, would probably be dealt with not by criminal or formal disciplinary charges, but by advice; or where preliminary investigation reveals that the conduct was both lawful and reasonable".

If a complaint is not suitable for informal resolution, or informal resolution is tried but fails, it must formally be investigated. For some types of complaint – such as where it is alleged that the conduct complained of resulted in death or serious injury – the complaint must be referred to the PCA.<sup>16</sup> In any complaint where referral to the PCA is not mandatory, the chief officer of police has discretion to refer the case to them.<sup>17</sup> The PCA may in turn require any complaint not already referred to them to be submitted.<sup>18</sup>

The investigating officer appointed to lead an investigation will always be a police officer, although sometimes from another force. Some investigations - usually in serious cases where particularly sensitive or difficult issues are raised - will be supervised by the PCA but will remain police investigations.

Once an investigation has been completed (whether or not supervised by the PCA) the chief officer of police must consider whether the investigating officer's report indicates that a criminal offence may have been committed by one or more police officers. If there

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<sup>14</sup> HC Deb 23 March 1998: Column 21

<sup>15</sup> For a fuller description of procedures see *Police Disciplinary and Complaints Procedures* First Report from the Home Affairs Committee Session 1997-98 HC 258-II Page 144

<sup>16</sup> Section 87(1)(a)(i) of the *Police and Criminal Act 1984*

<sup>17</sup> Section 87(1)(b) of the *Police and Criminal Act 1984*

<sup>18</sup> Section 87(2) of the *Police and Criminal Act 1984*

is such an indication that an offence has been committed, the chief officer must consider whether the officer should be charged and (if so) must send the report to the Director of Public Prosecutions. If the chief officer considers that the investigating officer's report does not indicate that a criminal offence may have been committed, a report must be sent to the PCA stating whether any disciplinary proceedings have been brought; an explanation must usually be given for any decision not to bring disciplinary charges.<sup>19</sup>

In answering a question about the fatal shooting by police of James Ashley, the Minister for Crime Reduction, Policing and Community Safety, John Denham confirmed in July 2001 that the Police Complaints Authority does not normally publish the report of an investigation but, rather, issues a statement of satisfaction about its conduct.<sup>20</sup>

## **2. Remit of the Police Complaints Authority**

The remit of the PCA derives from Part IV of the *Police Act 1996*.

The PCA has no jurisdiction in complaints about members of the police service who are not police officers. The aim was to give the PCA the power to investigate the actions of *police officers acting in the office of constable*, as there are other routes through which people can complaint about - or bring cases in law against - police civilian workers.

However, the fact that the actions of police civilian workers are outside the PCA's remit does not mean that they are wholly immune from any investigation or disciplinary action. Police forces have a variety of means for investigating complaints against civilian staff; there is no one national system. Some chief constables are said to believe that it is in fact easier to take disciplinary action against civilian staff, because the requirements of employment law are less prescriptive than those of the police disciplinary code which applies to police officers. There are a number of contentious issues here, some of which were alluded to in the HAC report. Whatever the strengths of the internal disciplinary processes, there may (for example) be issues of public confidence in having some areas of police activity outside the remit of the PCA.

At page 148 of the memorandum of evidence to the HAC, the Home Office notes that:<sup>21</sup>

Although the police take any complaint seriously, the internal investigation process for a civilian employee may not command the same public confidence as the statutory police complaints procedures involving the PCA. The PCA's remit

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<sup>19</sup> John Harrison And Stephen Cragg (1995) *Police Misconduct: Legal Remedies* 3<sup>rd</sup> Ed London: Legal Action Group

<sup>20</sup> HC Deb 9 July 2001 Col 416W

<sup>21</sup> To be found in *Police Disciplinary and Complaints Procedures* First Report from the Home Affairs Committee Session 1997-98 HC 258-II

may need to be reviewed if there is a continuing shift of police duties to civilian employees and contracted-out staff and if police services operated by local authorities become more prevalent [paragraph 45].

### 3. Time limit for making complaints

The *Police (Dispensation from Requirement to Investigate Complaints) Regulations 1990*<sup>22</sup> permit a dispensation where more than 12 months have elapsed between the incident giving rise to the complaint and the making of the complaint and *there is no good reason for the delay or injustice would be likely to be caused by the delay* (Home Office minute of evidence, page 144 paragraph 12: emphasis added). It is therefore possible that, if there is a delay of more than a year before making the complaint, the PCA may grant a dispensation unless the complainant can demonstrate that there were good reasons for the delay.

### 4. Independence and openness

Where concerns are expressed about the current system, these often centre on the perceived lack of openness and lack of independence in "police investigating police". In announcing the Government's response to the HAC report,<sup>23</sup> the then Home Secretary Jack Straw said:<sup>24</sup>

I accept the Committee's recommendation that the Home Office should conduct a detailed feasibility study of different arrangements for an independent police complaints investigation process. I also accept the committee's view that, in the absence of a totally new investigative body, fundamental changes to the complaints process would be premature, but that, in the meantime, the Police Complaints Authority should make robust use of its existing powers.

I accept in principle the Committee's recommendation that the PCA be given the powers and the funds to commission independent investigations in cases where there is reason to believe that the existing process is inadequate. However, that would involve significant extra costs, which I am afraid make early change here unlikely.

The committee recommended that either the PCA or any other independent review body should be able to undertake investigations whether or not the matter

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<sup>22</sup> Statutory Instrument 1990/1301

<sup>23</sup> *Government Reply to the First Report from the Home Affairs Committee Session 1997-8 Police Disciplinary and Complaints Procedures* HC 683 p.vi-vii

<sup>24</sup> HC Deb 23 March 1998 Col 21

has been the subject of a complaint. In the light of this, I am minded to propose that, as Home Secretary, I should be given a power to request or require the PCA to initiate and oversee such investigations where this is in the public interest.

[...]

In this country, we police by public consent, and that consent depends on public confidence and trust. The measures that I have announced today will strengthen the people's trust and confidence in their police service, and I commend them to the House.

The issue of an independent police complaints system was raised again in the report of the Stephen Lawrence Inquiry, which recommended that the Home Secretary should consider what steps should be taken to ensure that serious complaints against police officers were independently investigated.<sup>25</sup> In his action plan published after the report of the Stephen Lawrence Inquiry, the then Home Secretary, Jack Straw accepted this recommendation and said:<sup>26</sup>

1. A feasibility study of an independent complaints system will be completed by April 2000.
2. The Government is sympathetic to the principle of an independent system of investigation, which would do much to bolster public confidence in the complaints system. That was confirmed in the Government response to the Home Affairs Committee Report on Complaints and Discipline in February 1998. Recognising the importance of this for public confidence, we will be carrying out a detailed feasibility study of possible arrangements for an independent complaints investigation process, which will look at all the likely resource issues. There would be substantial resource and practical implications in taking the investigation of complaints out of police forces and into a totally separate body. Transferring resources from police forces' complaints and discipline departments would be likely only partly to offset the cost of such a system. That study will be completed by April 2000. We will consider in the light of that whether legislation should be brought forward to establish an independent system.
3. In Northern Ireland a completely independent system, under which all complaints are to be dealt with by a Police Ombudsman, is shortly to be implemented. That will also provide valuable experience of how a more independent system might operate.

Consultants carried out the feasibility study and developed four models for an independent body to investigate complaints against the police. These four models were discussed with Her Majesty's Inspectorate of Constabulary, the Association of Chief

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<sup>25</sup> *The Stephen Lawrence Inquiry: Report of an independent inquiry by Sir William Macpherson of Cluny* CM 4262-I p.333 recommendation 58

<sup>26</sup> *The Stephen Lawrence Inquiry: Home Secretary's Action Plan* March 1999 p.29

Police Officers and other "stakeholders". Liberty (formerly the National Council for Civil Liberties), Inquest and the Police Action Lawyers' Group also contributed. Liberty also conducted its own study of police complaints, published in May 2000 and available on Liberty's website.<sup>27</sup> In the accompanying press release, Liberty reiterated its view that the police complaints system should be independent, so as to bolster public confidence both in the complaints system and in the police.<sup>28</sup>

In December 2000, following the consultations, Charles Clarke – at that time Minister of State at the Home Office – announced the publication of a new framework for handling complaints against the police. He asserted that the new system would be independent, easier to access and more open.<sup>29</sup>

## **5. Other avenues of complaint**

In some circumstances the behaviour of police officers may be such as to give rise to the possibility of civil proceedings being brought against them, in addition to a formal complaint.

## **6. The Queen's Speech 2001**

In The Queen's Speech of 20 June 2001, it was confirmed that:

Legislation will be brought forward to help the police fight crime, ensure that they can co-operate effectively across police boundaries and establish a new complaints system.

John Denham confirmed in October 2001 that the Government would bring forward legislation in the current session.<sup>30</sup>

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<sup>27</sup> James Harrison And Mary Cunneen (2000) *An Independent Police Complaints Commission* Liberty - available at <http://www.liberty-human-rights.org.uk/police.pdf>

<sup>28</sup> *Liberty publishes blueprint for Independent Police Complaints Commission (1)* Liberty press release 17 May 2000

<sup>29</sup> HC Deb 18 December 2000 Col 65W

<sup>30</sup> HC Deb 22 October 2001 Col 65W

## B. Scotland

The complaints system in Scotland was mentioned during a debate in 1998 on a case of alleged racism, when the then Minister for Home Affairs and Devolution, Henry McLeish, confirmed:<sup>31</sup>

I am satisfied that current police disciplinary and conduct arrangements in Scotland are working. A major review of the complaints and discipline system in Scotland was conducted in 1996, resulting in new conduct regulations. The new regulations provide more flexibility in the way in which misconduct by officers can be dealt with and increase the range of disposals available. I am, of course, aware of the recent Home Affairs Committee report on police disciplinary and complaints procedures in England and Wales. I shall consider, in consultation with the police, whether any of its recommendations that we have not already covered need to be introduced in Scotland. My hon. Friend makes a valid point in saying that we should carefully consider any ways in which we can improve procedures.

A press release from the Scottish Executive in September 1999<sup>32</sup> and an extract from Her Majesty's Chief Inspector of Constabulary for Scotland's report for 1998/99<sup>33</sup> provide more background. In April 2000, HM Chief Inspector of Constabulary for Scotland published the report of a thematic inspection of the handling of complaints against the Scottish police.<sup>34</sup> The accompanying press release stated that:<sup>35</sup>

The overwhelming majority of complaints against police officers in Scottish forces are investigated with thoroughness, impartiality and integrity according to a Thematic Inspection published today by Her Majesty's Inspectorate of Constabulary.

Other key findings contained in the report *A Fair Cop?* include:

- Significant differences in the way forces record and investigate complaints.
- A need to emphasise the role of the Crown and the Procurator Fiscal service in respect of the independent investigation of criminal allegations against police officers.

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<sup>31</sup> HC Deb 1 June 1998 Col 149

<sup>32</sup> *Wallace Announces Review of Scottish Complaints Procedure* News Release: SE0 736/99 28 September 1999

<sup>33</sup> *Her Majesty's Chief Inspector Of Constabulary For Scotland Report For 1998/99* : October 1999 Cm 4464 SE/1999/31

<sup>34</sup> *The Investigation Of Complaints Against The Police In Scotland: A Fair Cop? A Report by Her Majesty's Inspectorate of Constabulary for Scotland* Scottish Executive/ HM Inspectorate of Constabulary in Scotland: April 2000 – available at <http://www.scotland.gov.uk/hmic/docs/afcp-00.asp>

<sup>35</sup> *A Fair Cop?* Scottish Executive Press Release SE0999/2000 6 April 2000 – available at <http://www.scotland.gov.uk/news/2000/04/se0999.asp>

- There is no structured system for addressing complaints against the police that do not involve allegations against individual officers.

[...]

Commenting on the findings, William Taylor, HM Chief Inspector of Constabulary said:

"The evidence from inspection shows that the overwhelming majority of complaints against police officers are investigated with thoroughness, impartiality and integrity.

"The Scottish police service has much to be proud of in respect of their relationship with the public and the mechanisms in place to deal with complaints against officers are generally sound. There is, however, scope for improving the system and this inspection report should act as a catalyst for significant development and will assist the Scottish Executive in addressing some of the issues highlighted in the inquiry into the death of Stephen Lawrence"

[...]

*The Scotsman* reported in July 2001 that Scotland was to have an independent body to investigate complaints against the police and quoted some critics of the current system.<sup>36</sup>

[...]

Launching a consultation document, Jim Wallace, the justice minister, said the new measures were aimed at boosting public confidence. What form the new body will take has yet to be decided, and legislation appears unlikely before 2003. The plans include two options - an ombudsman to oversee the complaints procedure, or an independent police complaints authority which could undertake its own investigations.

Mr Wallace said: "For the first time, Scotland will have an independent body responsible for looking after complaints against the police. The real fear is that if we do nothing to make the complaints system more transparent, we could erode the public's confidence in our police."

[...]

Last night, critics accused the executive of not going far enough. Aamer Anwar, a civil rights campaigner, attacked the proposals and said the police would still be involved in the handling of complaints. He said: "What they are suggesting is an

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<sup>36</sup> "New Watchdog May Probe Police Complaints" *The Scotsman* 6 July 2001

independent element, but that's not enough. For this to work, we need to take police out of the equation altogether."

A spokesman for the Scottish National Party rejected the option of an Ombudsman, arguing that it would be ineffective because it would rely too heavily on co-operation with the police. He said: "We would welcome an independent police complaints body, provided it has teeth."

The Conservative justice spokesman, James Douglas Hamilton, said Mr Wallace was merely introducing outside scrutiny to the existing system. He said: "This is wholly inadequate."

Senior police officers are drawing up a detailed response which ministers expect to receive in October, when the consultation process ends.

## **C. Northern Ireland**

A Police Ombudsman was appointed in Northern Ireland in 1999. In 1998, Adam Ingram, then the Minister of State for Northern Ireland, outlined the Ombudsman's role.<sup>37</sup>

(a) The Police (Northern Ireland) Act 1998 provides for the establishment of a new office of Police Ombudsman to handle complaints against the police. The Ombudsman will have complete control of the complaints process. The Ombudsman will independently investigate all serious complaints against the police and will decide how others are to be investigated. The new system is designed to secure the confidence of both the public and the police. The Ombudsman will be appointed on 1 March 1999 and the new body will be functioning by summer 1999.

(b) Information and statements provided by complainants are confidential documents. They are disclosed only in circumstances considered necessary to the investigation and in accordance with:

- (i) the RUC (Discipline and Disciplinary Appeals) Regulations 1988;
- (ii) NIO Guidance to the Chief Constable on Police Complaints and Discipline Procedures;
- (iii) the code and legislation dealing with disclosure in respect of criminal prosecutions;
- (iv) rules relating to disclosure in civil proceedings.

If, of course, there was intimidation, then this would be grounds for a complaint.

(c1) The initial letter forwarded to the complainant by the RUC Investigating Officer usually offers an interview, at a specified date and time, at the most

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<sup>37</sup> HC Deb 10 December 1998 Col 274 - 5

suitable and convenient Police Station. The letter also invites the complainant to telephone, or reply by returning a proforma in an addressed and prepaid envelope. Should a complainant, or their solicitor, wish the interview to take place elsewhere, every effort is made to accommodate their request. Interviews can take place at the offices of the Independent Commission for Police Complaints and at other mutually acceptable locations, including solicitors' offices, homes of complainants and third parties and Church or Community Halls.

(c2) Whilst no choice is offered on gender of the interviewer, the RUC do ensure that the most appropriate Investigating Officer is appointed having regard to the circumstances of the case. In supervised cases, it is open to the Independent Commission for Police Complaints, to approve, or otherwise, the appointment of a particular officer.

(c3) The 1998 regulations require that Investigating Officers are police officers. These officers operate in plain clothes.

In future, under the Police (Northern Ireland) Act 1998, there will be greater opportunity for interviews at neutral venues, and by the independent investigators of the Police Ombudsman.

### **III Independent Custody Visits to Police Stations**

#### **A. The origins and development of independent custody visits**

Although the number of Criminal Justice Acts in the last decade has (arguably) presented ample opportunity to write the independent custody visiting scheme into statute, it has remained outside the scope of law. This is in marked contrast to the situation in prisons, where every prison establishment's Board of Visitors has had a statutory power to enter the prison since 1952 and is required by the Prison Rules to do so.

Lord Scarman, in his report on the Brixton riots, recommended that there should be statutory provision for "random checks by persons other than police officers on the interrogation and detention of suspects in the police station".<sup>38</sup>

Gabrielle Cox, a former chairperson of the Greater Manchester Police Authority, noted in 1986 that this proposal was never put onto a statutory footing and so lay visitors had to negotiate for access to police stations.<sup>39</sup> Lay visiting of police stations was a low-key

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<sup>38</sup> *The Brixton Disorders 10-12 April 1981: Report of an Inquiry by the Rt Hon the Lord Scarman, OBE*: London: HMSO, November 1981 (Cmnd 8427) paras 7.7 – 7.10

<sup>39</sup> Gabrielle Cox (1986) 'Openness and Accountability' in John Benyon and Colin Bourn (Ed) *The Police: Powers, Procedures and Proprieties* Oxford: Pergamon

measure, attempting to check on the functioning of a closed institution, yet hemmed in by many rules and regulations and with the police very much in control. In general (she observed) the community had no rights to see what went on in its own police force, even through its representatives on the police authority. In Gabrielle Cox's own force of Greater Manchester, the police authority provided training for lay visitors, some of whom were members of the police authority or police-community liaison panels.

Home Office guidance to chief constables and police authorities in 1992 strongly encouraged them to set up, administer and support lay visiting schemes for police stations.<sup>40</sup> Such schemes could (according to the guidance) play a valuable role in police-community relations.

In 1998, Home Office research conducted amongst administrators of lay visiting schemes reported that all provincial police authorities had established schemes,<sup>41</sup> although in some police force areas not every designated police station was covered.<sup>42</sup> A lay visiting scheme operated in every London borough and covered all designated stations. The research found that police forces used various combinations of public advertising and recruiting via police-community consultative groups. Only one administrator of a lay visiting scheme was satisfied that that police force's pool of lay visitors was representative of the local community (although some others were reasonably satisfied). Fifteen administrators said that their police forces' panels did not reflect the local community at all. Recruiting young people and people from ethnic minorities was particularly difficult. London respondents were more likely to be confident that their panels were representative of the local community, although there too there were difficulties in recruiting younger people and people from the ethnic minorities.

To make it "more accessible and understood by the wider community", lay visiting has now been renamed *independent custody visiting*. There are an estimated 3000 active independent custody visitors in England and Wales.<sup>43</sup>

## B. Home Office guidance

The most recent guidance, issued by the Home Office in May 2001, comments that:<sup>44</sup>

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<sup>40</sup> Home Office Circular 4/92

<sup>41</sup> Mollie Weatheritt and Carole Vieira (1998) *Lay Visiting to Police Stations*: Home Office Research Study 188

<sup>42</sup> A designated station is one designated by the chief officer of police under §35 of the *Police and Criminal Evidence Act 1984* as one to be used for the purpose of *detaining arrested persons*.

<sup>43</sup> *Police Custody Visiting Guidance Updated Today* Home Office News Release 119/2001 4 May 2001

<sup>44</sup> *Independent Custody Visiting (Formerly Known As Lay Visiting)*: Home Office Circular 15/2001 4 May 2001 – available on Home Office website at <http://www.homeoffice.gov.uk/circulars/2001/hoc15.htm>

4. Independent custody visiting has steadily developed into an essential aspect of the scrutiny of police practice and procedures. As well as the protection it offers to detainees, it draws on the concerned commitment of volunteers and helps to build partnerships between the police and the communities they serve. It is strongly supported by the police and the overwhelming majority of officers contributing to the Police Foundation research welcomed independent custody visiting as a necessary and normal part of the arrangements for securing the accountability of the police.

5. 2 October 2000 saw the implementation of the Human Rights Act and the incorporation of the European Convention on Human Rights into our domestic law. The treatment of those in police custody is one key indicator of the extent to which we are embracing the culture of rights which these legal changes are intended to reinforce. Independent custody visiting provides an important check on that treatment and police authorities should ensure that the visiting arrangements they apply are as effective as possible. This guidance is intended to help in achieving that.

In launching the new guidance, the then Home Office Minister Charles Clarke suggested that independent lay visiting could offer benefits to the police.<sup>45</sup>

From a police perspective, it is a clear demonstration of their commitment to transparency and openness in relation to this critical aspect of their duties. It can also improve police management of their own performance and highlight action needed to enhance policy, training, communications or the daily work of officers responsible for custody at police stations.

The Chairman of the Independent Custody Visiting Association also welcomed the new guidance:

This new guidance represents the determination of all involved to improve the independent custody visiting process and deliver a high quality, consistent service. We welcome the new challenges that the guidance offers and will give every support and advice to police authorities in England and Wales in its implementation.

The Home Office's own history of lay visiting (contained within the latest circular) has suggested that the reconstitution of police authorities as bodies corporate compelled them to take heed of their responsibilities. Likewise, the creation of the Metropolitan Police Authority had prompted a review in London, but lay visiting remained little-known and understood, even within the criminal justice system.<sup>46</sup>

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<sup>45</sup> *Police Custody Visiting Guidance Updated Today* Home Office News Release 119/2001 4 May 2001

<sup>46</sup> *Independent Custody Visiting (Formerly Known As Lay Visiting)*: Home Office Circular 15/2001 4 May 2001

The recruitment process for independent custody visitors is becoming more open; most police authorities now advertise and the latest Home Office guidance advocates advertising in local media. It recommends that independent custody visitors should be recruited directly from members of the local community and that particular effort should be made to recruit under-represented groups, so that the pool of independent custody visitors reflects the diversity of the community.

The number of police force areas where the lay visitors are members of the police authority is small and diminishing. The latest Home Office circular reflects current thinking that recruiting from the police authority is undesirable, in part because earlier research found that schemes which drew their membership from the general public worked more effectively but also because recruiting from the police authority might undermine the scheme's lay status. Recruitment of justices of the peace, serving police officers and special constables - who might experience conflicts of interest - is discouraged for similar reasons.

## **IV Police Oath of Office**

### **A. Oaths of office**

Oaths of office are not, strictly speaking, oaths of allegiance. Oaths of allegiance were rendered unnecessary or even unlawful for most people by Section 9 of the *Promissory Oaths Act 1868*.

### **B. 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.

The Police Advisory Board (which has representatives from all the main police organisations including the Police Federation and the Association of Chief Police Officers) advised the Home Secretary in December 2000 that the police attestation should be changed, firstly to make clear the duty of the police officer to protect all who live in England and Wales (not only Her Majesty's subjects) and secondly to reflect the passing

of the *Human Rights Act 1998*. There was no suggestion that the reference to HM The Queen should be removed.

The Home Secretary accepted the Police Advisory Board's advice and the proposed changes to the attestation were described in December 2000, in the white paper on the police, which stated:<sup>47</sup>

6.17 The oath of allegiance will remain, including reference to Her Majesty the Queen but it will be amended to take account of the removal of the nationality bar and to make it clear that police officers have a duty to protect all those living here, not just British subjects. The changes will not affect the status of the constable as a person who holds office under the Crown and performs functions on behalf of the Crown.

## C. Scotland

The oath in Scotland is rather different: for more than 20 years, Scotland and Northern Ireland have had their own oaths and the oath of office in Scotland has been without any reference to Her Majesty. 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.

The form of the declaration is then set out in Regulation 10 of the *Police (Scotland) Regulations 1976*, which reads:<sup>48</sup>

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

## D. Northern Ireland

The oath of office sworn by recruits to the Royal Ulster Constabulary (now the Police Service of Northern Ireland) was changed in September 2001, with the implementation of the *Police (Northern Ireland) Act 2000*.

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<sup>47</sup> *Policing A New Century: A Blueprint for Reform* (Cm 5326) Home Office December 2001: page 111 – available at <http://www.policereform.gov.uk/news/policingsurvey.pdf>

<sup>48</sup> Statutory Instrument 1976/1073

## **1. The oath until September 2001**

The form of the oath of office until recently sworn by constables in Northern Ireland originated in Section 17 of the *Constabulary (Ireland) Act 1836* and was 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 form of the oath sworn by all police officers on becoming attested before September 2001 was:

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.

## **2. The oath from September 2001**

The Patten Commission recommended that the oath in Northern Ireland should be changed to:<sup>49</sup>

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.

Although the Patten Commission recommended a radical overhaul to the oath of office sworn by police officers in Northern Ireland, it is not the first to remove reference to HM The Queen. Nor (as we have already seen) is it a case of Northern Ireland moving away from an oath which is common to all parts of the United Kingdom.

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<sup>49</sup> *A New Beginning: Policing in Northern Ireland. The Report of the Independent Commission on Policing in Northern Ireland (Patten Report) September 1999*

The change to the oath was made in section 38 of the *Police (Northern Ireland) Act 2000*, which provides that:

**38.** - (1) Every police officer shall, on appointment, be attested as a constable by making before a justice of the peace a declaration in the following form-

"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 their traditions and beliefs; 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."

(2) The Chief Constable shall take such steps as he considers necessary-

(a) to bring the terms of the declaration to the attention of all police officers appointed before the coming into force of this section; and

(b) to ensure that they understand it and understand the need to carry out their duties in accordance with it.

(3) "Traditions and beliefs" does not include a tradition or belief so far as it is incompatible with the rule of law.

## ***V Policing A New Century: A Blueprint for Reform***

The Government's white paper *Policing A New Century: A Blueprint for Reform* was published in December 2001.<sup>50</sup> The white paper covered a range of topics and offered a variety of proposals, not all of which require legislation to be implemented and not all of which (therefore) feature in the Police Reform Bill. This section of the Paper therefore concentrates on some of the most salient of the white paper's proposals which form the context for the debate around the Bill. Copious other material relating to the white paper and its proposals is available on the police reform website.<sup>51</sup>

In an interview in the *Observer* just before the white paper's publication, the Home Secretary David Blunkett said that detection rates had to improve if public confidence in the police was to be maintained. He argued that tackling crime was part of the Government's commitment to social renewal:<sup>52</sup>

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<sup>50</sup> *Policing A New Century: A Blueprint for Reform* (Cm 5326) Home Office December 2001

<sup>51</sup> [www.policereform.gov.uk](http://www.policereform.gov.uk)

[...]

Blunkett's hard-hitting message comes three days before a government White paper on reforming the police, which is likely to plunge him into a bitter war of words with senior police officers.

He will announce measures including a rapid increase in the number of special constables and neighbourhood wardens patrolling the streets; reserve powers for the Home Secretary to take over failing forces; league tables to allow the public to compare police performance neighbourhood by neighbourhood; and an increase in uniformed officers to a record 130,000 by spring 2003, an increase of 5,400. By next year, he wants the figure to reach 128,300.

He will also confirm the creation of a cadre of 'superbobbies' who will be paid £3,000 bonuses to stay on the beat. 'There is a big missing factor on the liberal Left and that is that we have forgotten crime and disorder and the misery this brings,' he said. 'Tackling crime is part of the social renewal agenda. We have often, quite rightly, talked about education, health and the minimum wage. But we haven't said the thing that really bedevils people in the most disadvantaged areas is crime.'

## **A. Improving police performance: the reform agenda**

### **1. Variations in police performance**

In April 1998, the then Home Secretary, Jack Straw referred to the 'relentless quest' to improve police efficiency.<sup>53</sup>

[...]

Improving police performance is not just about pouring more money into the service. I appreciate that figures alone cannot tell the whole story but there are areas in which resource managers can raise standards. Not only in terms of buying goods at the right price but also by looking carefully at what it is we want the police service to achieve and ensuring that resources are directed to those goals. Obtaining best value for money within the police should be a relentless quest."

In November 1999, in a statement about the Government's crime reduction strategy, Jack Straw referred to differences and variations in police performance - some police forces

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<sup>52</sup> "I'll Tackle Our Failing Police, Says Blunkett" *Observer* 2 December 2001

<sup>53</sup> *Police Quest For Efficiency Should Be Relentless Mission - Jack Straw Home Office News Release* 132/98 6 April 1998

had been more successful than others in reducing crime - and the need to achieve greater consistency:<sup>54</sup>

Over the past five years, as figures published this morning show, all forces have achieved reductions in crime, but some have been much more successful than others: for example, Northumbria, Kent, Durham, Surrey and Gloucestershire have all achieved reductions in recorded crime of more than 30 per cent. Those statistics reveal that similar police forces and local authorities, with similar problems and similar resources, achieve widely differing performances in crime reduction. Reducing the crime rate of the 21 forces with the highest rates to that of the average would cut recorded crime by 0.5 million. However, we want to aim higher: our emphasis is on encouraging the police, local authorities and others to raise their performance. I have set out how we can raise performance and reduce crime across the country in the strategy document.

[...]

From January next year, we shall publish crime statistics not only for entire police force areas, but for individual police divisions, or basic command units. By April 2001, we should have data available to ensure top quartile targets at the level of the local partnerships. Together, those measures will enable people to see how their local police and partnerships are doing, compared with performance in equivalent areas.

Funding provision for police modernisation was announced in March 2000:<sup>55</sup>

Budget 2000 made an extra £285 million available for the fight against crime. This includes £185 million from the Capital Modernisation Fund, of which the Home Office allocation is £157 million. It also includes an additional £100 million for modernising the police service, of which around £91 million is for England and Wales.

[...]

5. The breakdown of the £91 million will be determined in discussion with the Association of Chief Police Officers (ACPO), the Association of Police Authorities (APA), the Local Government Association (LGA) and the police staff associations.

The *Observer* suggested in June 2001 that the use of performance league tables would fuel tension between the Government and the police service:<sup>56</sup>

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<sup>54</sup> HC Deb 29 November 1999 Col 21- 24

<sup>55</sup> *Huge Cash Boost To Build A Modern Crime Fighting Machine* Home Office News Release 070/2000 27 march 2000

<sup>56</sup> "League Tables For Police As Blunkett Targets High Crime" *Observer* 17 June 2001

[...]

The league tables will increase tensions between the police and the Government. A report published tomorrow by the Institute for Public Policy Research, a Blairite think-tank, will accuse the Government of playing politics with crime.

'There is an unsolvable tension between the carefully thought-out Crime and Disorder Act and the drive for performance,' said Peter Neyroud, deputy chief constable of West Mercia police and one of the report's authors.

[...]

The Government is convinced that policing is one of the few remaining public services that have not undergone the wholesale reform seen in other areas such as health and education. Crime is one of the most negative issues for the Government: many people believe Tony Blair has failed on the issue.

[...]

Soon after, the *Independent's* leader article suggested that the proposed Police Bill represented an attack on public sector vested interests:<sup>57</sup>

[...] Any government that chooses to pick a fight with the police or the doctors or the lawyers or the teachers would find deep scars on its back: taking on all four in one parliamentary session may be taking bravery too far.

Which is not to say that the Government is mistaken about wanting to deal with these groups, who mostly managed to evade even Margaret Thatcher's restless reforming zeal. In the case of the police, it is little short of scandalous that scams by officers such as taking early retirement to evade disciplinary proceedings should have been allowed to persist for so long. Making chief constables co-operate with neighbouring forces, spend their money more wisely and - just a hint of this - for their forces to be judged much more closely on their comparative performance in the manner of the league tables used for schools and hospitals should be just the spur to efficiency that the police have been lacking for too long.

[...]

In July 2001 John Denham, described how recorded crime statistics were to be grouped for comparison. He suggested that, to be effective, policing should be focused on the right targets.<sup>58</sup>

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<sup>57</sup> "The Work Goes On - But There Is A Glaring Omission In This Programme" *Independent* 21 June 2001

<sup>58</sup> HC Deb 2 July 2001 Col 6-7W

[...]

I agree that modern policing requires the effective use of resources, which must be devoted to the right targets to ensure that we are tackling and reducing crime. It is important that performance indicators, which are used, for example, in best value, are capable of capturing a range of different measures of the effectiveness of the police and of reinforcing best practice.

In the near future, we will consult with the Association of Chief Police Officers and the Association of Police Authorities on the indicators to be used in the coming year. The public, who pay for the police service, have a right to a range of useful information about the effectiveness of the police and our success or failure in the fight against crime, so that they know whether their local police are doing well or whether their performance needs to be improved.

## 2. The Policing Standards Unit

Very soon after the election, the new Home Secretary David Blunkett announced his intention to set up a standards unit within the Home Office, to drive up police performance. He said there was ‘no excuse’ for the disparities in individual police forces’ performance.<sup>59</sup> In an interview with the *Observer* shortly before the publication in December 2001 of the white paper *Policing A New Century: A Blueprint for Reform*,<sup>60</sup> David Blunkett suggested that the Home Office – in the form of HM Inspectorate of Constabulary and the Standards Unit – would be given the power to take over failing police forces:<sup>61</sup>

Blunkett said that there were unacceptable variations in detection rates across the country. He will now pave the way for Her Majesty’s Inspector of Constabulary and the Home Office Standards Unit to take over command units within police forces that are considered not up to scratch.

In a reform that has echoes of earlier education policies brought in by Blunkett before the last election, new managers will take over the failing units to inject ‘new thinking’.

Chief constables have told The Observer they are ‘very concerned’ about the proposals for intervention powers, and fear the independence of police forces will become blurred. They also said that any proposals from the Home Secretary to take powers to sack chief constables would be strongly resisted.

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<sup>59</sup> “Election Aftermath: Blunkett: New Controls On Economic Migrants: Plan To Link Work With Needs In Move To Frustrate Gangs” *The Guardian* 11 June 2001

<sup>60</sup> *Policing A New Century: A Blueprint for Reform* (Cm 5326) Home Office December 2001

<sup>61</sup> “‘I’ll Tackle Our Failing Police’, Says Blunkett” *Observer* 2 December 2001

'Mr Blunkett cannot use his war on crime as an excuse to muscle in on legitimate police work,' one chief constable said. 'We have already made a lot of improvements. The Home Secretary should recognise that.'

The terms of reference of the standards unit are:<sup>62</sup>

The Standards Unit exists to deliver the Government's commitment to raise standards and improve operational performance in the police and in crime reduction generally in order to maintain and enhance public satisfaction with policing in their area.

Its core objective will be to identify and disseminate best practice in the prevention, detection and apprehension of crime in all forces in order to reduce crime and disorder as well as the fear of crime.

The Unit will:

- Work with forces and BCUs<sup>63</sup> to ensure the most effective use of intelligence, detection and successful prosecution procedures.
- Identify BCUs or forces performing below their best, based on HMIC reports, statistical information, or particular cases of concern.
- Engage directly with the BCU or force to establish the nature of the problems, the extent to which best practice may be lacking, and the remedial action required.
- Engage similarly with other local agencies to ensure their effective contribution, including through Crime and Disorder Reduction Partnerships, where it is apparent that this is the key to police success in tackling crime and disorder at force level and below.
- Identify where in exceptional circumstances combined cross cutting measures engaging other agencies are required to focus on and achieve early change within a specific geographic area or BCU boundary.
- Draw validated best practice from HMIC, National Police Training, the Crime Reduction College and other agencies, spread its use through local engagement, and identify for professional evaluation any new examples or techniques it comes across.
- Have a capacity to provide short term funding to support the remedial action it has identified and which could not otherwise be undertaken.
- Identify cases in which the Home Secretary should consider the use of powers under the Police Act 1996, the Local Government Act 1999, or other relevant legislation.
- Identify issues which raise policy, technical or legal questions for the Home Office to address.

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<sup>62</sup> *Policing A New Century: A Blueprint for Reform* (Cm 5326) Home Office December 2001: Appendix 3

<sup>63</sup> Basic Command Units

## B. The white paper

Details of the broader police reform agenda can be found on the police reform website.<sup>64</sup> An article in the *Independent* in June 2001, before the publication of the white paper, had already suggested that the Government was likely to clash with police staff bodies over its planned changes:<sup>65</sup>

[...]

In what is likely to be a bruising encounter, the Home Secretary intends to adopt a "softly, softly", behind-the-scenes negotiating strategy, backed by a new Police Bill, which one source described as the "big stick" to force through some of the more controversial changes. Details of the Bill have yet to be decided, but it will give the Home Secretary the power to force the police service to toe the line and make what many ministers believe are long-needed reforms.

On the need to drive up police performance, the white paper quoted Audit Commission research which found no ready explanation for the variation in performance between police forces:<sup>66</sup>

1.39 Even more worrying, perhaps, than the decline in detection and conviction rates over the last twenty years, are the variations and lack of consistency between the best and the worst policing in different parts of the country. The Audit Commission finds no explanation for the differences in performance, even allowing for varying local circumstances:

‘There remain, however, significant variations in performance between police forces. These variations cannot simply be explained by differences in workload or by the varying circumstances forces face...

‘There is no consistent link between increases in spending and improvements in performance. Of those forces that increased spending the most between 1994/95 and 1998/99, some registered improvements across a number of key indicators, others did not...’

Audit Commission<sup>67</sup>

The white paper went on to argue for the systematic promotion of good practice across the police service, to bring every force up to the standard of the best:

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<sup>64</sup> at <http://www.policereform.gov.uk/>

<sup>65</sup> “The Queen’s Speech: Crime - Blunkett Faces Battle Over Police Reforms” *Independent* 21 June 2001

<sup>66</sup> *Policing A New Century: A Blueprint for Reform* (Cm 5326) Home Office December 2001: page 19

<sup>67</sup> Audit Commission (2000) *Local Authority Performance Indicators 1998-99*. London: Audit Commission.

2.5 At present a large body of good practice guidance intended to tackle variations in practice and performance is published by the Home Office, the Association of Chief Police Officers, the Association of Police Authorities, and others. Forces and their Basic Command Units are regularly inspected by Her Majesty's Inspectorate of Constabulary.

2.6 No mechanisms exist, however, for ensuring that best practice is promoted systematically across the entire police service. As a result, successful innovation is slow to spread and variations in performance are not systematically challenged. This results in the wide variations in performance outlined in the previous chapter.

2.7 In chapter seven we set out how a new Police Standards Unit, revised performance measures, inspection and a statutory framework for best practice and policy will raise standards across the police service. The Standards Unit will fill a critical gap in the present systems, by taking the evidence from existing sources and then engaging at Basic Command Unit (BCU) level, both to identify the most successful approaches and to spread them to BCUs with poorer performance. Ultimately there will be a power of intervention for the Home Secretary to ensure that performance improves if this cannot be achieved by any other route.

Yet some commentators have cast doubt on whether reform is the answer to the perceived shortcomings of the police – or even whether those shortcomings are what they seem. Writing before the publication of the white paper or the Bill, Reiner (2000) questions the assumption that falling public confidence is attributable to declining police standards and asks whether scandalous revelations of police malpractice really do indicate that police integrity has been weakened.<sup>68</sup> Even in the supposed golden era of policing in the mid-20<sup>th</sup> century, there was much police wrongdoing which only later came to light, for example in the Timothy Evans and Derek Bentley cases. What has changed, Reiner suggests, is not so much the police wrongdoing but the culture which formerly meant that the police were shown more deference and complaints were rare. Just as crime rates have increased and the nature of crime has changed, so the police have had to adopt more coercive methods.

## **1. Police pay and conditions**

In advance of publication of the white paper, the Police Federation<sup>69</sup> was said to be opposed to the proposed revision of officers' terms and conditions of service, which was expected to include (amongst other things) the introduction of performance pay.<sup>70</sup> Yet the white paper argued that change to the structures for police pay and conditions would

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<sup>68</sup> Robert Reiner (2000) *The Politics of the Police* (3<sup>rd</sup> edition) Oxford: OUP page 213 - 4

<sup>69</sup> which represents "rank and file" police officers below the rank of superintendent

<sup>70</sup> "Police Warn of Clash on Reforms" *Financial Times* 1 December 2001

be beneficial and would result in a better, fairer, more flexible system for deploying and rewarding police officers.<sup>71</sup> It asserted:<sup>72</sup>

2.20 The current pay system often create disincentives for officers to work in the very roles that the police service and the public most need and value. It has too few rewards for those who want to stay in direct contact with the public on the streets or who reach the highest level of professional competence.

Proposals relating to the deployment and reward of police officers were thus put to the Police Negotiating Board<sup>73</sup> on 24 October 2001:<sup>74</sup>

**Home Office Minister John Denham said:**

"We are all working to raise standards and improve performance and I want to continue to work in partnership with the police service and police authorities so we can develop the reform programme together.

"Modernising the police service is about providing the skills, resources and incentives necessary for the Police Service to tackle crime and disorder effectively and reduce the fear of crime.

"We are today asking the Police Negotiating Board to explore and discuss how we can reach agreement on a number of issues; including how to achieve a fairer system of pay particularly for those doing demanding jobs; more flexible working arrangements and more efficient deployment of officers."

The PNB is being consulted on how best to deliver a number of proposals including:

- Greater flexibility in the pay system which would enable some posts - those which are recognised as particularly demanding, hard to fill or exercising particular responsibilities - to receive a higher level of pay.
- More flexible working patterns to aid deployment and encourage recruitment;
- Flexible arrangements to allow officers who would otherwise be lost to the Service to stay on beyond 30-years;

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<sup>71</sup> *Policing A New Century: A Blueprint for Reform* (Cm 5326) Home Office December 2001: page 2

<sup>72</sup> *ibid*: page 31

<sup>73</sup> The PNB is the statutory negotiating forum for police pay and conditions of service. Its members are drawn from all the main police organisations, including the Association of Chief Police Officers, the Association of Police Authorities, the Police Federation, the Superintendents' Association, as well as Government Ministers. It considers matters such as pay, allowances, hours of duty, leave, pensions, and makes recommendations to the Home Secretary, Scottish Ministers and the Secretary of State for Northern Ireland. The Prime Minister appoints its independent chairman.

<sup>74</sup> *Police Reform Plan Put Before Police* Home Office Press Notice 24 October 2001 – available on police reform website at <http://www.policereform.gov.uk/news/reformplan.asp>

- Providing a fairer, more consistent approach to managing officers suffering from sickness and injury, either back to duty or into retirement with an ill-health pension;
- Rationalising the system of allowances; and
- Reforming regulations governing conditions of service.

Other measures designed to modernise the police force put forward for discussion include; the introduction of national recruitment standards, the establishment of a national occupational health strategy, and the introduction of standard grievance procedures.

The Government will be publishing a white paper later this year outlining the key reforms it is seeking. PNB is being asked to explore and agree the best way of achieving those reforms.

The Government has asked the PNB to agree, in principle, to the key elements of the reform package by the end of December 2001.

The Heads of Agreement negotiated and agreed in principle between official and staff sides of the Police Negotiating Board are reproduced on the police reform website.<sup>75</sup> They do not require legislation to be implemented.

John Denham confirmed in January 2002 that the changes had to be ratified by the end of February.<sup>76</sup> On the question of reducing the premium rate payable for overtime, he asserted on 28 January 2002 that – given the introduction of various new payments and bonuses – most police officers would gain financially from the proposed changes:<sup>77</sup>

One of the proposed changes is to reduce the premium rates of pay, but not to plain time, for working overtime, on rostered rest day and on public holidays. The reductions would be phased in over two years, the first stage on 1 April 2003 and the second stage on 1 April 2004. The savings from reducing the premium rates of pay would be re-invested into the new pay framework.

The proposed reductions in premiums have to be seen in the context of all the other changes set out in the heads of agreement. Those changes include shortened pay scales for all federated ranks, a minimum increase of £402 on 1 April 2003 on each point of the pay scales, a new competence-related payment of £1,002 at the top of the scales.

There will also be a new special priority payments scheme to reward those officers working at the sharp end of public service, doing the most difficult and demanding tasks. Officers in qualifying posts will receive a payment of between

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<sup>75</sup> at [http://www.policereform.gov.uk/news/heads\\_agreement.pdf](http://www.policereform.gov.uk/news/heads_agreement.pdf)

<sup>76</sup> HC Deb 28 January 2002 Col 81W

<sup>77</sup> HC Deb 28 January 2002 Col 82W

£500 and £5,000 a year. The national criteria are that posts carry a significantly higher responsibility than the norm for the rank; or are particularly difficult to fill; or have specially arduous working conditions. All parties in PNB recognise that there are a number of specialist posts where long hours are a necessary and integral part of the officers' role rather than due to management failure.

In addition, chief constables will be able to award bonuses of between £50 and £500 for occasional work of an outstandingly demanding, unpleasant or important nature, such as hostage negotiation, or fingerprinting and searching badly decomposed bodies.

The Government believe that, taking all the elements of the package into account, the vast majority of officers will be better off.

Press reports the next day, however, suggested that the Home Secretary, David Blunkett was prepared to offer concessions on the reduction in overtime rates:<sup>78</sup>

He also decided to drop plans to cut overtime rates and end time off in lieu for officers working on Christmas Day, Boxing Day, Good Friday and Easter Monday. He promised that “significant” new money would be available for annual payments to specialist officers.

It appeared yesterday that the concessions would not be enough to overcome vehement opposition to the package before police are balloted on the proposals on February 6. A Police Federation source said: “I think the leadership is resigned to a ‘no’ vote.”

The Police Federation balloted its members on the pay and conditions proposals, which were rejected by a very wide margin. In a statement on 22 February 2002, the Home Secretary described the Police Federation as again blocking change.<sup>79</sup> The package was therefore referred (as the legal process requires) to conciliation and John Denham again sought to highlight how police officers would benefit from the proposed package:<sup>80</sup>

We want to support police reform with a better, fairer pay system for police officers. The package of measures on the table will leave the vast majority of officers, over a period of time, better off. We now want to convince front line officers that this is the case.

[...]

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<sup>78</sup> “Police Snub Blunkett On Revised Wage Deal” *Times* 29 January 2002

<sup>79</sup> *Results of Police Federation Ballot on Pay and Conditions – Statement by the Home Secretary* 22 February 2002 STAT007/02

<sup>80</sup> See *Police Pay and Conditions Package Goes to Conciliation* Home Office Press Notice 052/2002 25 February 2002

We realise that all ranks from police constables to chief inspectors need more reassurance about how this deal will benefit them. That is why we yesterday issued letters to all Chief Constables, Chairs of the Police Authorities and cascaded to borough commanders clarifying what the package means to all officers.

The Home Office press notice described the next steps to be taken:

As part of the conciliation process the Official side will formally put forward changes outlined by the Home Secretary in January. These include.

- double time premium rate of pay for working at Christmas and Easter should be retained, and
- officers in diplomatic protection, undercover work, surveillance work and kidnap cases should get a ring-fenced allowance to protect them from impact of reductions in premium rates of pay.

If conciliation fails, the package has to be referred to arbitration.

There are three independent arbitrators, known collectively as the Police Arbitration Tribunal (PAT). The process for arbitration is that the Official Side (that is, Government, ACPO, and Police Authorities, together with their Scottish and Northern Ireland counterparts) and the Staff Side (the Federation and other staff associations) present their cases to the arbitrators. The arbitrators then consider all the arguments and come to a decision. Their decision has the force of an agreement in the PNB. The agreement is then put to the Home Secretary to make a final decision. In making this decision he has to take into account the decision of the arbitrators and the reasons they have given for their decisions.

## **2. Nationality requirements**

Current nationality requirements for holding the office of constable effectively restrict appointments as constables to British, Irish and Commonwealth citizens. The white paper pledged:<sup>81</sup>

6.16 The restrictions on foreign nationals serving as police officers will be removed by the Police Bill.

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<sup>81</sup> *Policing A New Century: A Blueprint for Reform* Cm (5326) Home Office December 2001: page 111

### 3. Complaints against the Police

*Policing A New Century – A Blueprint For Reform* committed the Government to introducing new structures and arrangements for dealing with police complaints through the Police Bill:<sup>82</sup>

#### **PUBLIC CONFIDENCE, WHILE VARIABLE, IS TOO LOW**

1.46 [...] An important aspect of public confidence is the handling of complaints; the new procedures being introduced (see 6.55) are designed to address this issue.

[...]

#### **COMPLAINTS**

[...]

6.56 The key objective for the new system is to increase public confidence and trust in the police and in the complaints system. This will be done by:

- enabling the IPCC<sup>83</sup> to investigate serious complaints independently;
- increasing access to the system;
- providing much quicker resolution of complaints;
- increasing openness by improving communications with complainants and families; and
- improving scrutiny of the system through improved collection, analysis and reporting of data.

6.57 The IPCC will have referred to it all serious cases falling into specified categories, and will have its own powers of investigation into those cases and into other complaints at its discretion. It will have its own investigating teams, independent of the police, with chief officers under a legal duty to give them full access to all necessary documents and police premises. These teams will be overseen by an Independent Commissioner and managed on a day-to-day basis by an independent civilian investigation manager. The teams will comprise a mix of police and non-police members to secure the necessary investigative skills and public confidence.

6.58 The public's access to the police complaints system will be widened, allowing a person other than the victim of alleged police misconduct to make a complaint. Complaints will also be accepted without necessarily being submitted through the police.

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<sup>82</sup> *Policing A New Century – A Blueprint For Reform* (Cm 5326) Home Office December 200: page 120

<sup>83</sup> Independent Police Complaints Commission

6.59 The complainant will receive a full and frank account of how the investigation has been conducted, a summary of the evidence and an explanation of why the conclusions to an investigation were reached. A complainant will have a right of appeal if they feel that the written account does not provide a satisfactory explanation of the investigation. A priority within the new system will be reducing the time it takes for a complainant's case to be dealt with. The IPCC will report publicly on its performance.

#### **4. Community support officers**

One of the proposals within *Policing A New Century: A Blueprint for Reform* which attracted most comment was that concerning community support officers. According to the white paper:<sup>84</sup>

Front line policing can be strengthened by enhancing the role of police support staff, and by giving them new powers which will allow them to take over tasks currently carried out by police officers for example in custody suites. Other support staff ('Community Support Officers') will be empowered to carry out basic patrol functions. They will provide a visible presence in the community with powers sufficient to deal with anti-social behaviour and minor disorder.

The white paper emphasises that community support officers would be under the control of the chief officer of police<sup>85</sup> and goes on to describe the types of duty which community support officers might perform and the powers they might enjoy.<sup>86</sup>

5.7 Such support staff would be uniformed and would be under the formal direction and control of the chief officer. For day to day purposes, however, they would become part of the local response to crime and disorder delivered by the BCU commander. The Government's priority for funding will remain reaching the target of 130,000 police officers by the end of March 2003. However, where resources allow, police authorities and chief officers will need to consider the proportion of the budget that should be allocated to support staff – either in a patrolling function or freeing up officers' time at the police station – to meet local needs. These staff would be additional to the 130,000 target for regular police officers.

5.8 Community Support Officers deployed in the community would have a vital role to play in support of the police in increasing public safety and contributing to the regeneration of an area. It is envisaged that they would deal with functions such as:

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<sup>84</sup> *Policing A New Century: A Blueprint for Reform* (Cm 5326) Home Office December 2001: page 11

<sup>85</sup> *ibid*: page 14

<sup>86</sup> *ibid*: page 85

- Anti-social behaviour (monitoring compliance with Anti-Social Behaviour Orders and Acceptable Behaviour Contracts, truancy checking, viewing CCTV footage; dealing with off road vehicles which are mostly unlicensed and without a current registered keeper).
- Environmental matters (liaison with local authority on graffiti removal, abandoned vehicles, litter).
- Public order support (crowd stewarding, street wardens, crime scene cordon).
- Criminal justice support (curfew checks of offenders on bail, supervision of reparation scheme activities, house to house enquiries, missing persons enquiries, victim support, bail enquiries).
- Providing additional eyes and ears on the streets at all times, but particularly at times of terrorist threat.

It went on:

5.9 Many of these functions could be carried out without any additional powers. Others could be done more effectively if chief officers were able to give community support officers some limited powers. These powers could range from a requirement to give a name and address up to a power of detention (but not arrest). The issue of powers for community support officers will be covered in the Police Bill. They could include the following:

- a power to detain, pending the arrival of a constable;
- a power to use reasonable force to detain a person;
- a power to stop vehicles, direct traffic or undertake vehicle removals;
- a power to issue fixed penalty notices in relation to a range of anti-social behaviours (e.g. dog fouling, litter, drinking in 'designated areas'); and
- powers relating to vehicle excise offences, emissions and road checks.

5.10 There would need to be accompanying new offences of assault on support staff and of obstructing them in the course of their duty. Support staff would also have to be brought within the ambit of the police complaints processes. Before exercising these new roles and the accompanying powers, the staff concerned would need to be properly trained, and the new Police Skills and Standards Organisation (6.70) will have a key role in defining the needs.

In February 2002, John Denham reiterated that community support officers would complement police officers, thus enabling them (he said) to concentrate on serious and persistent offenders:<sup>87</sup>

I welcome the hon. Gentleman's support. He is right that the role of community support officers will complement that of the professional police officer. The roles are not to be confused, and one operates in support of the other. One of the main reasons for that is to enable the police to concentrate their time and efforts on the serious crimes that rightly worry the public and on which they wish the bulk of

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<sup>87</sup> HC Deb 4 February 2002 Col 591-2

police energy to be directed. It is critical, at the moment, that every effort is made to concentrate resources on persistent offenders who cause the majority of crime so that they are identified, caught, convicted and punished.

Unlike community support officers, special constables are attested as police constables. There has been a decline in their numbers in recent years, which in the white paper the Government has also pledged itself to reverse.<sup>88</sup>

4.31 The Government wants to reverse the decline in the number of Specials. Special Constables can be a vital resource in ensuring public confidence, and embody active citizenship. They can act as agents for community regeneration and civic renewal by enabling the public to act in partnership with the police and by encouraging people to take pride in their communities.

4.32 The Government is therefore considering a number of options to improve both recruitment and retention of Specials. Following on from the recommendations in the Home Office funded research in 2000, these are focusing on improvements in the management and deployment of Specials. We are also exploring the case for paying an allowance to recognise levels of commitment. It is particularly important that Specials are utilised effectively, making the most of their commitment and skills to help to increase that active police presence visible in the community.

The proposals relating to community support officers have not, however, met with universal approval. Both the Police Federation and Liberty have voiced concerns. The Police Federation described the proposals as “policing on the cheap” and argued that they would undermine the concept of policing by consent:<sup>89</sup>

[...]

David Blunkett, Home Secretary, said the Bill was "an opportunity to modernise the way the police service works".

But Fred Broughton, chairman of the Police Federation, which represents 126,000 frontline officers, said: "Modernisation cannot be an excuse for policing on the cheap. Employing lesser-trained and lesser-paid civilians to perform police duties will undermine policing by consent and could create more problems than it solves."

Elsewhere, Liberty suggested that community support officers would be poorly trained and less accountable than police officers:<sup>90</sup>

[...]

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<sup>88</sup> *Policing A New Century – A Blueprint For Reform* (Cm 5326) Home Office December 2001: page 70

<sup>89</sup> “Civilian Police To Go On The Beat Within Months” *Daily Telegraph* 26 January 2002

<sup>90</sup> “Crime: Civilian Patrols To Hold Suspects For 30 Minutes” *Independent* 26 January 2002

Mark Littlewood, campaigns director of Liberty, said: "Police powers have to come with adequate training and accountability: that simply means these powers should remain with the police. If more people are needed to implement them, that should mean more police officers, not poorly trained and less accountable civilian substitutes."

## 5. Accredited community safety organisations

The white paper also put forward proposals for making greater use of organisations – such as neighbourhood wardens or sports stewards - already involved in aspects of community safety.<sup>91</sup> This was not, the Government argued, policing on the cheap:<sup>92</sup>

5.12 This is not policing on the cheap but a realistic, hard headed approach to deploying and co-ordinating the people who can work to rid the community of abandoned cars, graffiti, thuggish and anti-social behaviour. The extended police family gives the neighbourhood additional power to take proper responsibility for itself. The sort of functions members of the extended police family would address are broadly the same as for community support officers above, covering environmental matters, anti-social behaviour, stewarding, supervision of reparation scheme activities etc.

To maintain and enforce standards, there would be a process of accreditation:<sup>93</sup>

<b>ACCREDITED ORGANISATIONS (ACSOs)</b>	<b>COMMUNITY</b>	<b>SAFETY</b>
<ul style="list-style-type: none"> <li>• Accreditation is at the discretion of the chief constable, and is subject to annual review.</li> <li>• Schemes must be consistent with the force's annual policing plan.</li> <li>• The police authority and the local Crime and Disorder Reduction Partnership should be consulted on proposals for accreditation.</li> <li>• A criminal record check on employees must be carried out.</li> <li>• Training to nationally agreed standards must be completed in specified areas(including basic legal issues).</li> <li>• Protocols on working arrangements and information sharing with the police and other partners must be agreed.</li> </ul>		

<sup>91</sup> *Policing A New Century – A Blueprint For Reform* (Cm 5326) Home Office December 2001: page 86

<sup>92</sup> *ibid*: page 87

<sup>93</sup> *ibid*: page 88

- Staff would wear a badge or kitemark indicating that their organisation conforms to standards required by the local police.
- Appropriate access should be provided to police command and control systems.
- Staff will work under the direction and control of their own employer, who remains liable for their conduct.
- Day to day co-ordination and information exchange with the police will be through the local beat manager, normally a senior community police officer.
- Adequate disciplinary and complaints resolution procedures must be in place in the employing organisation.
- Costs of meeting these requirements fall to the organisation seeking accreditation.

5.16 Members of Accredited Community Safety Organisations would be eligible for similar powers to those set out above for Community Support Officers, although, as they are not police employees, they would not have the power to use reasonable force in order to detain someone. A number of non-police staff already have significant powers necessary for specific functions, for example, environmental health officers, educational welfare officers, and railway revenue protection officers. For Accredited staff, however, the powers would only be accessible through the operation of a dual key: the chief executive or other employer would have to seek them, and the chief officer would have to agree. If agreed, Accredited staff would only be granted powers relevant to the particular function they were performing. The continuation of the powers would be subject to the annual review of accreditation.

## **6. Force size and organisation**

The white paper raised the possibility that some smaller forces might pool their resources – or might even merge – in the interests of Best Value and efficiency, but stressed that the Government did not want forces to divert attention and energy to wholesale restructuring:<sup>94</sup>

4.6 Some smaller forces may not be able by themselves to sustain the levels of specialist police officers and police support systems needed to meet all the possible demands on them. It is essential that these forces cooperate and pool resources with others where necessary. As part of the Best Value process police authorities must consider the scope for collaboration in the provision of different functions, and this may well provide the best way forward. If, however, the authorities concerned feel that the overall needs of policing would be better met

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<sup>94</sup> *Policing A New Century – A Blueprint For Reform* (Cm 5326) Home Office December 2001: page 63

through considering amalgamation, the Home Secretary would consider the case on its merits in the light of his general duty under the Police Act 1996 to promote the efficiency and effectiveness of the police.

4.7 The Government's priority is to keep forces focused on delivering crime reduction and increasing public confidence. The opportunities and requirements under Best Value, particularly in terms of collaboration with neighbouring forces, may allow many of the benefits of a larger force size to be achieved without the inevitable disruption of a merger. We do not want energy diverted into widespread restructuring. Where proposals for amalgamating forces are put before us, we will continue to examine them on their merits.

## **7. Police regulations and negotiating machinery**

The white paper suggested that many of the statutory regulations which govern nearly all aspects of police conditions of service were rigid, inflexible and out of date.<sup>95</sup> It remarked that even such matters as how many shirts should be issued to police officers each year were covered by regulations.

The white paper went on to suggest that qualifications for appointment to a police force, or for the duty to carry out lawful orders, should continue to be covered by regulations but less weighty matters by a formal determination by the Secretary of State. After all, this already happened for pay, the most significant aspect of police officers' conditions of service, where the Secretary of State took account of recommendations from the Police Negotiating Board. There were also likely to be matters where decisions could be taken at a local, force level: one such matter might be rostering and shift arrangements where greater flexibility would permit more efficient use of police officers' time.

### **C. Reactions and responses to *Policing A New Century: A Blueprint for Reform***

The Home Office received numerous responses to the white paper: 123 of these have been placed in the Library.<sup>96</sup>

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<sup>95</sup> *Policing A New Century – A Blueprint For Reform* (Cm 5326) Home Office December 2001: page 121

<sup>96</sup> Held in Home Affairs Section

## 1. The Association of Chief Police Officers (ACPO)

The ACPO submission described the association as ‘at one with the Home Secretary in wishing to see an active modernisation programme equipping the Service for the many complexities of policing in the 21<sup>st</sup> century’. However, the Association goes on to say that:

5. Where there is less enthusiasm in the Association of Chief Police Officers for the white paper recommendations is for its centralising aspects. [...] As it stands, the white paper suggests a shift in the balance between the partners [in the tripartite relationship] that would start to erode the statutory local accountabilities of both the chief constables and police authorities.

We can and will work with a Standards Unit. It is right however to point out the great sensitivity that exists in the Service about an organisation apparently designed to intervene between the Chief Constable and Superintendents in so direct a fashion. Direct intervention in failing BCUs is at odds with the declared intention of sharpening chief constables’ accountability for their forces’ performance. The implication that BCUs are somehow autonomous town police forces is wrong.

[...]

We do not oppose the Home Secretary having appropriate powers to deal with inefficiency but consider there is a residual danger, contrary to the spirit of British policing and the tri-partite structure, in being over centralist and directive.

On other members of the ‘police family’, ACPO remarked:

25. There are, we have to say, mixed views in the Service about the direct employment of auxiliaries. There is some measure of agreement on two aspects of this programme.

That we should work more closely with wardens and other like staff employed by other organisations; we are developing a framework plan for co-operation

If resources are directly available for police forces to employ additional staff, we could all identify many tasks that could be undertaken so as to free up police patrols (gaolers, statement takers, traffic enforcers etc). Where there is concern is around the employment of uniformed auxiliaries on general patrol. (Specific security duties as planned by the [Metropolitan Police] may be outside this remit). Some of our colleagues believe that if there are to be street wardens they would do better to employ them themselves. There are bound to be issues around whether the operational gain from, say, six wardens, as against, say, four police officers would be *best value* or whether matters of discipline, complaints, retention, protection and the like would be advantageous. If

there are to be police run schemes we would hope that they are objectively assessed in *best value* terms.

## 2. Association of Police Authorities

Although convinced of the need for some reform to reflect changes and raised expectations in society, the Association of Police Authorities also expressed concern about the implications for the tripartite relationship.

- ... Police authorities believe that the proposals in the white paper, although no details are given in some areas, would in totality fundamentally damage the current constitutional position.
- Police authorities are local partners of the Government. They will not support proposals which have the effect of turning them into local agents of Government, or which sideline the voice of local communities.
- Police authorities continue to believe that the principle of the operational independence of chief officers within the tripartite framework of accountability, remains an essential bedrock of policing.

[...]

Police authorities and the APA would therefore welcome confirmation from the Home Secretary of his commitment to use and exploit the strengths and continuous presence of police authorities in delivering the reform agenda and enabling policing that meets the needs of the individual communities the police serve.

## 3. The British Security Industry Association

The BSIA warmly welcomed the white paper. It supported the concept of stronger partnerships between the police and the private security industry to reinforce the fight against crime and suggested that a national contractual standard might be helpful in establishing the private sector's credibility and winning trust. The Association also suggested that its members could contribute to support services, leaving police officers free for duties which only they could perform: statement taking, dealing with lost property and protecting scenes of crime were (it suggested) amongst the support services which might be done by the private sector.

The BSIA also argued that the private security industry should be involved in Crime and Disorder Partnerships: some were already acting as sponsors but there might be scope for a greater, non-financial role. The Association also remarked that the prohibition on private security company employees joining the Special Constabulary might no longer be

relevant or necessary, given the likely introduction of regulatory regimes and changes within the Special Constabulary itself. The 110,000 employees of the private security industry could (it argued) provide a useful recruiting pool for the Special Constabulary.

#### **4. The Greater London Authority**

The Mayor of London welcomed the white paper's proposals for reform and suggested that they would contribute to more focused and responsive policing in London and elsewhere. In particular, the Mayor welcomed the white paper's proposals for a new independent complaints system, although he considered that they did not go far enough. He argued that all IPCC investigators should be lay officials with investigatory powers, rather than former police officers. As he said:

The crux of this model is that investigation of complaints against the police would be taken out of the hands of the police. This would go some way to addressing the public's concern that the police investigate themselves.

#### **5. The Justices' Clerks Society**

The Justices' Clerks Society of England and Wales offered its perspective as (it said) an important stakeholder group, able to comment on how the police contribute to the criminal justice system.

The Society welcomed the white paper and its key principles for reform. It particularly welcomed the proposals on benchmarking and spreading good practice as (it said):

Individual forces must be receptive to new ideas, and be prepared to think in new and different ways. In the Society's experience, there is reluctance amongst some forces, not necessarily all, to look beyond their own boundaries.

The Society went on to argue for better inter-agency working and "joined-up thinking" and a greater willingness on the part of the police to accommodate the needs and requirements of other agencies. It observed that there were evident dangers in creating private police or quasi-police bodies through the use of non-police staff in support of the police and questioned whether such a move would boost or undermine public confidence. It also pointed to the need to improve the quality and timeliness of police prosecution files, where there was often inefficiency and poor performance, and remarked that the non-attendance of police witnesses at court was the biggest cause of delay between the entering of a not guilty plea and a trial date.

The Society also suggested that the rigidity of police staffing arrangements was having a detrimental effect not only on the police's performance but also on the performance of other criminal justice agencies. It concluded that:

It is right that the Home Secretary should be equipped to intervene where a force is considered to be failing.

## **6. The Local Government Association**

The Local Government Association (LGA) again welcomed the white paper's proposals. It suggested that, before exercising their powers to recruit community support officers, chief officers should consult the local authority, to ascertain whether local people would support the move. Community support officers should reflect the composition of the local community and targets for ethnic minority recruitment would be appropriate.

The LGA supported the so-called "dual key" approach whereby local authorities and police forces would jointly accredit local authority neighbourhood wardens or private security firms as accredited community safety organisations. The Association argued that, before such organisations were given any police powers, police authorities should be required to consult the relevant local authorities.

The Association was in favour of the proposed policing priority areas and welcomed the opportunity for more joined-up central government activity. It welcomed the white paper's proposal to streamline the procedures for anti-social behaviour orders, but suggested that there should be some accompanying guidance.

## **7. The Police Federation of England and Wales**

The Police Federation of England and Wales remarked that there was much in the white paper which it could welcome with little or no reservation. However, its main message to the Government was that it had grave concerns about police powers being given to people not attested as constables and about the involvement of the private security industry in patrolling public areas:

134. These changes would confuse the public, cause disturbance rather than provide reassurance and, in the case of private security involvement, risk infiltration by criminal elements.

135. Nor do we think that the public would welcome these changes. Like us, the public wants more uniformed officers on the streets but they want them to be highly trained and accountable, professional police officers.

136. We commissioned ICM to conduct a poll to find out the public's views on the Government's proposals in the policy paper. Their key findings in the research in this area were

- 76 per cent favoured more police officers on the streets rather than the proposed [community support officers]
- whereas only 15 per cent backed the use of non-police personnel
- 63 per cent opposed the plan to give support officers/street wardens powers to stop and detain members of the public and use "reasonable force" in doing so; and
- 71 per cent rejected the proposal to allow non-police personnel to carry batons or spray (as suggested by the Home Office on the back of the policy paper and now, thankfully, withdrawn).

137. As an alternative to the changes proposed, we urge the Government to reconsider the benefits of our proposal to build up and professionalise the special constabulary into an effective auxiliary force. We have spelled out the compelling advantages of relying on attested auxiliary police officers compared with [community support officers], wardens or private security staff. This is the way to police the new century – the right blueprint for reform.

## **8. UNISON**

UNISON, the majority trade union representing police support staff, also offered comments. The union welcomed the attention which this white paper, unlike others, had paid to police support staff. It noted that previous good intentions had foundered because of the cultural difficulties in integrating support staff into the dominant police culture: the demeaning use of the term *civilian* was one example of this.

UNISON went on to argue that police support staff should be directly employed, experienced and well trained. They should be offered more opportunities for development and their terms and conditions should be reformed as police officers' were. The union supported the proposed role of specialist support staff as investigators and the wider proposals for deploying support staff outside the police station, but wished to be consulted about extending the remit of the IPCC to support staff. It did not, on the other hand, support the use of volunteers in place of directly employed support staff. It suggested that the reform agenda provided an opportunity to enhance the role of traffic wardens.

## VI The Police Reform Bill

Because of the length of the Bill, this section of the paper seeks to focus on some of the most prominent and controversial issues. Commentary on the Bill can be found in the explanatory notes.<sup>97</sup>

### A. Extent of the Bill

For the most part, the Bill extends only to England and Wales. However, part 5 (on the Ministry of Defence Police), clauses 60 (on nationality requirements for police officers); 70 (on the Police Information Technology Organisation); 74(5) (on reimbursement from other authorities of funds paid from police, National Criminal Intelligence Service or National Crime Squad funds); and all provisions relating to the National Criminal Intelligence Service would also apply to Scotland.<sup>98</sup>

### B. Part 1: Powers of the Secretary of State

Part 1 of the Bill would confer various powers on the Secretary of State.

**Clause 1** would impose a new duty on the Secretary of State (within the *Police Act 1996*) annually to prepare and lay before parliament a National Policing Plan. This would identify the Secretary of State's strategic policing priorities for England and Wales for three years and would cover such matters as objectives, regulations, guidance and codes of practice. In an adjournment debate on 8 March, John Denham said that this plan would provide the basis for future debates in Parliament, both a debate on the Adjournment and to discuss policing priorities, performance and strategic direction.<sup>99</sup>

**Clause 2** would amend the *Police Act 1996* by giving the Secretary of State power to issue codes of practice for chief officers. The drafting of such codes of practice would be undertaken by the Central Police Training and Development Authority and ACPO and

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<sup>97</sup> *Police Reform Bill [HL Bill 48] Explanatory Notes* Home Office January 2002 – available at <http://www.publications.parliament.uk/pa/ld200102/ldbills/048/en/02048x--.htm>

<sup>98</sup> This paper was written whilst the Bill was still in the House of Lords and so all clause numbers relate to the Bill in its Lords form.

<sup>99</sup> HC Deb 8 March 2002 Col 533

others (as the CPTDA saw fit) would normally have to be consulted. According to the Explanatory Notes:<sup>100</sup>

Where the Secretary of State proposes to issue or revise a code of practice he is required to ask the Central Police Training and Development Authority (CPTDA) - a Non-Departmental Public Body (NDPB) established under section 87 of the Criminal Justice and Police Act 2001 - to prepare a draft of the code or appropriate revision (*subsection (3)*). In preparing a draft the CPTDA must consult appropriate persons. These would normally include, amongst others, ACPO, the APA and other police representative bodies (*subsection (4)*). The new section complements the existing section 39 of the 1996 Act, which contains a parallel power to issue codes of practice to police authorities.

**Clause 3** would add a further power to the *Police Act 1996*, enabling the Secretary of State to direct HM Inspectorate of Constabulary to inspect any police force, the National Criminal Intelligence Service or National Crime Squad or any division or aspect of that force, service or squad. A similar power inserted in the *Police (Northern Ireland) Act 1998* would enable the Secretary of State to require the inspectors to inspect the Northern Ireland Police Service or the National Criminal Intelligence Service or any part or activities thereof.

**Clause 4** would replace existing powers within the *Police Act 1996*, to enable the Secretary of State - where an inspection report commissioned under the powers just mentioned had shown the force (or part of the force) to be not efficient or not effective - to give directions to the police authority to take such measures as he decides.

**Clause 5** would confer parallel powers to give directions to chief officers. Where the Secretary of State was satisfied that the force (or a part of it) was not efficient or not effective, he would be empowered to demand from the chief officer an action plan, containing remedial measures to address any matters which the Secretary of State considered relevant. The plan would have to be drawn up in consultation with the police authority (**clause 5(9)**) and the Secretary of State would have the power to direct the chief officer to revise and resubmit it (**clause 5(4)**).

**Clause 6** contains powers for the Secretary of State to make regulations on police equipment. This could include specifying the equipment to be used or specifying its type. According to the Explanatory Notes, the sorts of equipment which might be covered could include vehicles, IT systems, batons, incapacitant sprays, headgear or protective clothing.<sup>101</sup>

**Clause 7** provides for the regulation of operational procedures. The Secretary of State would have the power - where he considered it to be in the national interest - to issue

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<sup>100</sup> *Police Reform Bill [HL Bill 48] Explanatory Notes* Home Office January 2002

<sup>101</sup> *ibid*

regulations, requiring all police forces in England and Wales to follow particular operational procedures. He would be required to take advice from the CPTDA, who in turn might consult whoever it thought fit.

Thus, this part of the Bill would give the Home Secretary various new powers, some of which might be interpreted as strengthening central (and thus political) control of the police, at the expense of chief officers' operational independence. However, they would not give the Home Secretary any power to take over the management of failing police forces or to send in 'hit squads' to take command.

## C. Part 2: Complaints and misconduct

**Clause 9** provides for the creation of the Independent Police Complaints Commission (IPCC). Its chair would be appointed by HM The Queen and a minimum of ten other members would be appointed by the Secretary of State. Past and present police officers would be barred from appointment, as would others who had worked for the police, the National Criminal Intelligence Service or National Crime Squad (**clause 9(3)**). This (according to the Explanatory Notes) is to exclude those people who might previously have been within the scope of the IPCC's investigatory remit and so might not be impartial.

The general functions of the IPCC are set out in **clause 10**. These centre on

- The handling of complaints about the conduct of people serving with the police
- The recording of instances where it appears that people have behaved in a way which constitutes a criminal offence or which might warrant disciplinary action and
- The way in which complaints are dealt with.

The Explanatory Notes describe the Commission as the 'guardians of the system'.<sup>102</sup>

The detailed arrangements are set out in **schedule 2**. The Explanatory Notes point out that the chairman of the IPCC would have a longer term of office than currently enjoyed by the chairman of the Police Complaints Authority, although he could be removed from office if (for example) he had unreasonably failed to carry out his duties for three months, been sentenced to imprisonment for three months or longer or been made bankrupt.<sup>103</sup>

**Clause 11** would require the IPCC to make an annual report to the Secretary of State and other reports which he might require. The IPCC could also make other reports, drawing the Secretary of State's attention to other matters which have come to its notice, perhaps

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<sup>102</sup> *Police Reform Bill [HL Bill 48] Explanatory Notes* Home Office January 2002

<sup>103</sup> *ibid*

because of their gravity or other exceptional circumstances (**Clause 11(3)**). **Sub-section 10** sets out those individuals and bodies to whom the IPCC must send its reports. **Clause 12** sets out more detailed criteria for the application of Part 2.

**Clause 14** excludes the direction and control of the police force by its chief officer or acting chief officer from the remit of the IPCC and empowers the Secretary of State to offer relevant guidance to chief officers.

**Clause 15** would impose a duty on chief officers, on police authorities and on HM Inspectorate of Constabulary to keep themselves informed of how complaints or other conduct matters are dealt with in their respective forces. In the words of the explanatory notes:<sup>104</sup>

138. [...] The purpose of this duty as respects a police authority or a chief officer is to enable them to exercise the necessary management control to ensure their functions and duties under this Part are discharged in an effective and efficient way. The purpose of this duty as respects an inspector of constabulary is to enable him to take account of these matters during his inspection of a police force.

Where one force lends assistance to another under clause 15 powers, **clause 16** provides for payment to be made. **Clause 17** would require police authorities and chief officers to make information available to the IPCC. According to the explanatory notes:

146. Therefore, the Commission must be able to gather information on all parts of the system. This clause places a duty on police authorities and chief officers to provide the Commission with all information and documents in accordance with requirements as specified in regulations made by the Secretary of State.

Similarly, **clause 18** would require chief officers and police authorities to give the IPCC access to their premises and documents.

**Clause 19** would enable the Secretary of State to make an order, authorising the IPCC to use surveillance powers (including the use of covert human intelligence sources) to carry out its functions. Again according to the explanatory notes:<sup>105</sup>

This power is required to ensure that the IPCC, when dealing with serious criminal offences alleged to have been committed by police officers, has similar powers to those given to the police under the Regulation of Investigatory Powers Act 2000.

To foster greater openness, the IPCC would be under a duty to keep complainants informed during and after an investigation (**clause 20**).

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<sup>104</sup> *Police Reform Bill [HL Bill 48] Explanatory Notes* Home Office January 2002

<sup>105</sup> This issue is discussed again in the section on the Joint Human Rights Committee's report

## D. Part 3: Removal, suspension and disciplining of police officers

The *Police Act 1996* provides that senior police officers may be called upon to retire in the interests of efficiency and effectiveness. **Clause 28** would add resignation to these powers. **Clause 29** would create a new power for police authorities to suspend senior police officers who might be called upon to retire or resign. In the words of the explanatory notes:<sup>106</sup>

162. This clause introduces a new power for police authorities, on their own initiative or when required to do so by the Secretary of State (for the latter of which, see also clause 30), to suspend chief officers who are or may be called on to retire or resign in the interests of the efficiency and effectiveness of their force. As a safeguard against arbitrary or unfair use by the police authority, the approval of the Secretary of State is required.

**Clause 30** would confer on the Secretary of State the power to require the Metropolitan Police Authority or other police authorities to resign, retire or suspend the Commissioner, Deputy Commissioner or chief constable, by amendment of the *Police Act 1996*. Again according to the explanatory notes, the clause introduces a further safeguard regarding the use of the efficiency and effectiveness powers (by requiring the Secretary of State to give notice to the officer concerned and to allow that officer to make representations) and also streamlines the process for considering cases brought under these powers. The Secretary of State would have a permissive power to make regulations (**clause 31**).

**Clause 32** governs the conduct of disciplinary proceedings. In short:<sup>107</sup>

170. As with the handling of complaints, the handling of disciplinary proceedings could make or break public confidence and trust in the police. This clause deals with regulations that can be made by the Secretary of State under sections 50 and 51 of the *Police Act 1996*. In addition to the existing powers to make regulations under these sections, this clause allows regulations to cover the rights of the IPCC in regards to disciplinary proceedings and the right of specified persons to participate in or to be present at disciplinary proceedings, and to provide for inference to be drawn from a failure to mention a fact when questioned or charged in police disciplinary proceedings.

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<sup>106</sup> *Police Reform Bill [HL Bill 48] Explanatory Notes* Home Office January 2002

<sup>107</sup> *ibid*

## E. Part 4: Police powers etc

**Clause 33** would enable the chief officer of police to designate any employee of the police authority (or person under the chief officer's direction and control) as a community support officer, investigating officer, detention officer or escort officer. The chief officer would have to be satisfied that the dedicated person was suitable for the task, capable of effectively carrying it out and had been adequately trained for it (**clause 33(3)**). **Schedule 4** elaborates on the police powers exercisable by police civilians. Part 1 defines the powers of community support officers:<sup>108</sup>

180. This Part ... lists the powers that can be conferred on Community Support Officers. These include the power to issue a range of fixed penalty notices relating to anti-social behaviour - for example in respect of litter. It also gives the power to request a name and address from a person committing a fixed penalty offence or an offence that causes injury, alarm, distress or damage to another, and the power to detain, for a limited period<sup>109</sup> awaiting the arrival of a constable, a person who fails to comply with the request to give their name and address. These powers will enable civilians performing patrolling functions to address many anti-social behaviour offences.

Under powers in **clause 34**, the chief officer would have the power to establish and maintain a community safety accreditation scheme within the force area. This would have the aim of contributing to community safety and security and combating crime and disorder, nuisance and anti-social behaviour. Under **clause 35**, the chief officer would have the power to accredit employers with whom he or she had entered into an agreement to carry out community safety functions. **Schedule 5** sets out the powers exercisable by accredited persons (which are narrower than those exercised by community safety officers).

Under **clause 40**, it would be an offence, liable on summary conviction to up to 6 months' imprisonment or a level 5 fine on the standard scale, to assault a designated or accredited person or a person assisting them in the exercise of their duty. Impersonating a designated or accredited person with intent to deceive, making a false statement or acting falsely to suggest that one is a designated or accredited person and making a false statement or acting falsely to suggest that one had powers as a designated or accredited person more than one actually had would also be an offence, liable on summary conviction to up to 6 months' imprisonment or a level 5 fine on the standard scale.

**Clause 42** amends the *Police and Criminal Evidence Act 1984*, by adding three further offences to the list of offences for which a power of summary arrest exists and providing for the complete list of arrestable offences (previously in section 24(2) of the 1984 Act) to

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<sup>108</sup> *Police Reform Bill [HL Bill 48] Explanatory Notes* Home Office January 2002

<sup>109</sup> of up to 30 minutes

be set out in a more accessible form in the Schedule. The explanatory notes explain the significance of an offence being arrestable:<sup>110</sup>

244. [...] Under section 24 of PACE a constable may arrest without warrant anyone he has reasonable grounds to suspect has committed, is about to commit or is committing an arrestable offence. Section 24 sets out the definition of an arrestable offence as (a) any offence for which the sentence is fixed by law, (b) any offence for which a sentence of imprisonment of five years or more may be imposed and (c) any offence listed in subsection (2). If an offence is not listed as arrestable under section 24 of PACE, then unless general arrest conditions under section 25 of PACE apply, or there is a specific statutory power of arrest such as that attached to section 103(1)(b) of the Road Traffic Act 1988, the police are unable to take suspects into custody and question them. Questioning can only take place at the scene of the offence and a suspect may only be summonsed to appear at a magistrates' court to answer charges. Arrestable offences attract other investigative powers under PACE. For example under section 17(1)(b) of PACE a constable can enter and search any premises without a warrant for the purpose of arresting a person for an arrestable offence.

**Clause 44** confers a power on a uniformed constable to require a person acting in an anti-social manner (within the terms of the *Crime and Disorder Act 1998*) to give his name and address.

**Clause 45** requires every police authority to make arrangements for a scheme of custody visitors, who must be independent of both the police authority and the chief officer of that force. **Clause 46** makes what the explanatory notes describe as a technical amendment to the *Police and Criminal Evidence Act 1984*'s provisions for reviewing the detention of people asleep in police cells, to clarify when it is permissible not to wake the sleeping person to give them an opportunity to make representations against continuing to be held in custody.<sup>111</sup>

**Clauses 47 to 55**, dealing with various road traffic matters, and **clauses 56 to 59**, dealing with the Ministry of Defence Police are discussed separately below.

## F. Part 6: Miscellaneous

**Clause 60** removes the nationality requirements for holding the office of constable. The explanatory notes describe how these requirements – which effectively restrict appointments as constables to British, Irish and Commonwealth citizens – came about:<sup>112</sup>

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<sup>110</sup> *Police Reform Bill [HL Bill 48] Explanatory Notes* Home Office January 2002

<sup>111</sup> *ibid*

<sup>112</sup> *ibid*

312. Section 3 of the Act of Settlement 1700 provides that 'no person born out of the kingdoms of England, Scotland or Ireland or the dominions thereunto belonging.. shall.. enjoy any office or place of trust either civil [sic] or military.' Section 6 of the Aliens (Restriction) Amendment Act 1919 provides that no alien shall be appointed to any office or place in the Civil Service of the State, though there are various exceptions to these provisions. The prohibitions do not apply to Commonwealth citizens or to citizens of the Irish Republic by virtue of the 1981 British Nationality Act, while the Aliens' Employment Act 1955 as amended by the European Communities (Employment in the Civil Service) Order 1991 (SI 1991/1221) disapplies the prohibitions to various groups, such as British protected persons. Nonetheless, currently - and in consequence of the above - employment as a member of a police force of England and Wales, Scotland, Northern Ireland, the National Criminal Intelligence Service, the National Crime Squad, the British Transport Police, the United Kingdom Atomic Energy Constabulary, the Royal Parks Constabulary, or the Special Constabulary, is restricted to British citizens, citizens of the Irish Republic and Commonwealth citizens. If an applicant is a citizen of the Irish Republic or a Commonwealth citizen other residential and ancestry conditions must be satisfied.

**Clause 61**, dealing with the attestation, would amend the police oath. **Clause 62** would enable the Secretary of State to delegate to HM Chief Inspector of Constabulary his functions in the appointment of Assistant Commissioners, Deputy Assistant Commissioners or Commanders in the Metropolitan Police or assistant chief constables and chief constables elsewhere. The explanatory notes describe recent changes to the arrangements for senior appointments:<sup>113</sup>

322. New arrangements for considering the approval of these posts were set up in spring 2001. These arrangements were designed to make the approval process more transparent. A Senior Appointments Panel, chaired by HM Chief Inspector of Constabulary (HMCIC), which includes representatives from the Association of Police Authorities, the Association of Chief Police Officers and the Home Office, together with an independent member, now looks at all cases.

323. As part of the new arrangements, it was decided that the Panel should be able to exercise the Secretary of State's power of approval in routine cases. A change to the primary legislation is needed to allow this to happen. This clause introduces provision allowing the Secretary of State to delegate his approval. Since the Panel is not a statutory body, the approval powers are being delegated to HMCIC. In practice, HMCIC will act in agreement with the Panel.

**Clauses 63 and 64** relate to the National Criminal Intelligence Service and **clause 65** to the National Crime Squad. They would remove the restriction which leaves only senior police officers eligible for the post of Director General of NCIS: if a non-police officer

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<sup>113</sup> *Police Reform Bill [HL Bill 48] Explanatory Notes* Home Office January 2002

were to be appointed, he or she would not hold the rank of chief constable, as a police officer would. They would broaden the pool from which NCIS is staffed, firstly by allowing the secondment of officers from the Ministry of Defence Police and secondly by enabling NCIS to employ recruit police officers rather than taking them on secondment. Like provisions would apply to the NCS.

**Clause 66** would require police authorities to publish a three year strategy plan. The Home Secretary would have powers (inter alia) to issue guidance to the police authority and to the chief officer on what should be contained within the plan (**clause 66(6)**). According to the explanatory notes, the strategy plan would:<sup>114</sup>

[set] out the strategic direction and focus for the force area, incorporating an overview of demographic changes since the previous plan and any consequential refocusing of policing activity and resources. The purpose of the plan is to focus on the medium to longer term direction of the force, which is often not possible in the annual plans that they already produce. It should highlight future developments required for the effective policing of the force area, taking into account local circumstances and proposed national initiatives.

**Clause 68** sets out to amend the *Crime and Disorder Act 1998*. The clause would permit the merging of crime and disorder partnerships with drug action teams and place the latter on a statutory footing for the first time. It would also permit partnership areas to merge. **Clause 69** would give powers to the Home Secretary and to the National Assembly for Wales to require responsible authorities to make provision in their strategies for specified areas of crime or disorder: these powers are couched differently for England and Wales because local government is a devolved matter.

**Clause 71** will remove what the explanatory notes describe as an unintended effect of the *Greater London Authority Act 1999*. That Act effectively created secure tenancies, whereby a number of police officers occupying properties owned by the Metropolitan Police Authority would be eligible to exercise a right to buy their properties at a discount when the two year qualifying period had elapsed on 3 July 2002. The explanatory notes observe that:<sup>115</sup>

395. In addition to the measures specified on the face of the Bill, in March/April 2001 the Metropolitan Police Service came to an agreement with the Police Federation, to extend the period officers could occupy MPA housing if they had been secure tenants and they did not exercise their right to buy prior to the amendment being brought into effect, by 2 years (up to a maximum occupancy of 7 years).

396. Future tenancies granted by the MPA will be assured shorthold tenancies.

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<sup>114</sup> *Police Reform Bill [HL Bill 48] Explanatory Notes* Home Office January 2002

<sup>115</sup> *ibid*

**Clause 73** seeks to clarify the liabilities of chief officers of police, the Directors General of NCIS and the NCS and the Central Police Training and Development Agency, by making them liable for any unlawful conduct of those whom they employ or who act under their control. **Clause 74** provide a legal basis for civil liabilities arising from operations of joint investigation teams involving police officers from England and Wales and law enforcement officers from abroad. **Clause 75** extends the offence of assaulting or obstructing a constable or person assisting a constable in exercising his duties to assaulting or obstructing a member from abroad of an international joint investigation team.

## VII Some Reactions to the Bill

### A. Home Secretary's powers

John Wadham of Liberty (the National Council for Civil Liberties) has warned against the increase in the Home Secretary's powers which the Bill would bring about. He argued that the Bill's provisions would speed the erosion of local accountability:<sup>116</sup>

Liberty welcomes the shadow Home Secretary's strong stance against David Blunkett's plans to assume more power over the police.

Local policing and local accountability are precious constitutional safeguards. Already these safeguards have been gradually eroded by the introduction of Europol, the National Crime Squad, the National Criminal Intelligence Service and by allowing the Security Service (MI5) to dabble in crime (changes largely made by the Conservatives). But the Police Reform Bill will give the Government unprecedented powers to influence local policing.

The police must be accountable to the public on two levels – for the actions of individual officers and for overall policing policy. The Government tackles the first strand here in its plan for an independent police complaints commission – broadly welcome, though it must do more to ensure genuinely independent scrutiny.

But its proposals on overall accountability have far less to recommend them. Yes, the current system of police authorities needs reform – but to reduce the influence of government and increase that of local communities, not vice versa. And indeed the very fragility of the current system makes these new proposals to give more power to the Home Office all the more dangerous.

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<sup>116</sup> 'Reduce Government Power Over Police' Letter to the *Daily Telegraph* 2 March 2002

I am sure we all trust Michael Howard, Jack Straw and David Blunkett never to abuse their powers; but the structures of policing should protect us from abuse whoever becomes Home Secretary. Oliver Letwin should be congratulated for demanding fewer powers for the post he would occupy if the Conservatives enter Government.

The chairman of ACPO and chief constable of Kent, Sir David Phillips QPM, giving evidence to the Home Affairs Committee, again expressed concern that ACPO had on the face of the Bill not explicitly been given a role in formulating operational policing policy, although it was mentioned as a body which might be consulted.<sup>117</sup>

I think the thing that perhaps concerns me about the Standards Unit is the extent to which the involvement of ACPO and its policy making activity is recognised. My greatest concern in the Bill is the way that policy is likely to be formulated.

21. (David Cameron) By the Home Secretary, is that the concern, or by the Standards Unit?

(Sir David Phillips) The Home Secretary through the Standards Unit. If you look at the Bill, the Bill says that policy will be created as codes or as regulations and that this will be drafted by the training department. The training department will take notice of whoever they wish to consult. The nearest that we get to a mention of ACPO is we are one of those who they may wish to consult. Now, historically, we have been the authors of operational policing policy, mainly because if anything goes wrong operationally we are the people who have to appear in the coroner's court or who are vicariously liable for the actions of our officers following our operational directives. It may be an issue of parliamentary draftsmanship that because we do not exist as a legal entity we cannot be referred to on the face of a Bill but that seems to me an insufficient reason to deal with this matter.

[...]

The greatest issue for me in the Bill is this question of operational policy.

## **B. Police complaints**

Sir Alastair Graham, chairman of the Police Complaints Authority gave a broad welcome to the Bill on its publication:<sup>118</sup>

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<sup>117</sup> Home Affairs Committee: Inquiry into the Police Reform Bill: Examination of Witnesses 7 February 2002 (uncorrected evidence)

<sup>118</sup> *Police Reform Bill* PCA Press Notice 25 January 2002

“We welcome the legislation although we have not yet had the opportunity to examine the Bill in detail. But we have been working, for several years, with the Home Office and the police service to help develop the Independent Police Complaints Commission.

I am chairing the working party that is piloting aspects of the new system so that the lessons learned can be passed onto the Home Office and the IPCC. This includes a pilot on appeals against the refusal to record a complaint; a pilot on the police force giving a provisional result to the complainant; and a pilot in which the PCA will lead the preparation of the misconduct case against a police officer” said Sir Alastair.

On the other hand, Liberty, in its initial response to the Bill, suggested that its provisions for an independent police complaints system did not go far enough.<sup>119</sup>

Mary Cunneen, associate director of Liberty, said:

We have long welcomed the Government's commitment to introduce a new independent police complaints commission - as long as it is genuinely independent and adequately resourced. By today's proposal, it will be neither. [...] This proposal has good intentions but it does not give a clear enough blueprint to ensure independent investigation of serious complaints against the police.

### **C. Community support officers and community wardens**

In giving evidence to the Home Affairs Committee, the vice-chair and general secretary of the Police Federation of England and Wales disputed that community support officers could play a useful part by boosting police numbers and enabling police officers to deal with serious crime.<sup>120</sup>

158. If there is money to be spent on Community Support Officers with limited powers I think we could certainly spend it better than spend it on Community Support Officers. [...] What I think we have got here is a proposal for a second tier of policing which I think will draw the police into that tier to sort out the problems rather than the opposite. [...] Our answer is to put more uniformed police officers back on the street, which appears to work well in those areas where it has been in trial.

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<sup>119</sup> *Blunkett's Police Complaints Reform Falls Short: Initial response to Police Reform Bill 25th January 2002* : Liberty 2002 – available at <http://www.liberty-human-rights.org.uk/>

<sup>120</sup> Home Affairs Committee: Inquiry into the Police Reform Bill: Examination of Witnesses 14 February 2002 (uncorrected evidence)

Liberty also expressed misgivings about the delegation of police powers to people who were not constables.<sup>121</sup> In the words of Liberty's associate director, Mary Cunneen:

[...] If more people are needed to do police work, that simply means we need more police officers, not poorly-trained and less accountable civilian substitutes.

The Government seems unable to decide whether anti-social behaviour is a serious criminal offence, to be treated as such and handled by the police, or a trivial matter for civilian staff and civil court processes. In reality, much of it is a real blight on people's lives and is criminal behaviour: it should be treated as such, via the police and the criminal courts, not through ill-advised short-cuts.

## VIII *Police Reform Bill*: Traffic policing and the British Transport Police

### A. Traffic policing

Several respondents to the white paper on police reform were concerned at its omission of traffic policing.<sup>122</sup> RoadPeace, the national charity for road traffic victims, points out that there is no mention of traffic policing in the white paper although more people are killed or injured on the roads than by physical violence. They claim that the public want a visible presence on the roads to stop dangerous drivers as well as to deter street crime. They also cite Home Office research (Briefing Note5/00) showing that a high proportion of dangerous and disqualified drivers are also perpetrators of other types of crime.

The Royal Society for the Prevention of Accidents (RoSPA) is also concerned that there is no reference to traffic policing and believes that it should be seen as a top police priority. It regrets that the white paper fails to identify the existence, let alone the importance, of road crime, which takes many forms such as speeding, red light running, drinking and driving as well as dangerous or careless driving. It cites the figures for road casualties in 2000; 3,410 deaths and 38,155 serious injuries, and the cost of these accidents, £17 billion. It mentions the report by Her Majesty's Inspectorate of Constabulary (HMIC) on road policing and traffic<sup>123</sup> which highlighted the link between traffic policing and other aspects of police work and the importance of consistency of approaches between police forces.

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<sup>121</sup> *Blunkett's Police Complaints Reform Falls Short: Initial response to Police Reform Bill 25th January 2002* : Liberty 2002 – available at <http://www.liberty-human-rights.org.uk/>

<sup>122</sup> , *Responses received from organisations and representative bodies on the white paper: Policing a New Century: a Blueprint for Reform* Home Office February 2002.

<sup>123</sup> *Road Policing and Traffic* HMIC Thematic Inspection Report 1998

The Slower Speeds Initiative is astonished to find that no mention at all is made in the white paper of speeding, road safety or improving service delivery in the area of road policing. It is concerned that the “absence of any strategic consideration of the role of road policing in a reformed police service indicates serious downgrading of its importance.”

The Institute of Road Safety officers (IRSO) criticises the white paper for its heavy emphasis on the need to reduce crime involving drugs, theft from cars and anti-social behaviour and making little mention of anti-social behaviour on the roads.

However, following discussions with the police the Bill does make a number of amendments to road traffic legislation.

## 1. Powers of traffic wardens

**Clause 37** will give traffic wardens the power to stop vehicles which is currently only held by police officers. Under section 95 of the *Road Traffic Regulation Act 1984 (RTRA 1984)* traffic wardens are empowered to undertake functions prescribed by the Secretary of State. Section 96(1) of the *RTRA 1984* provides that in certain specified enactments references to a constable shall include references to a traffic warden. Section 96(3) imposes a limitation by providing that certain powers cannot be conferred on traffic wardens, including the general power to stop vehicles under section 163 of the *Road Traffic Act 1988 (RTA 1988)*. This means that generally police officers must be employed in undertakings where it may be necessary to stop vehicles, even where their other powers may not be required. Clause 37 removes this restriction by omitting section 163 of the *RTA 1988* from section 96(3) of the *RTRA 1984*.

## 2. Powers of arrest

Driving while disqualified is an offence under section 103(1)(b) of the *RTA 1988*. This offence has a power of arrest but it is restricted to situations where a uniformed officer physically sees a motorist driving a vehicle whom he reasonably suspects of being disqualified. **Clause 42** amends section 24 of the *Police and Criminal Evidence Act 1984 (PACE)* to include three further offences in a new Schedule 1A. This will extend the power of arrest under section 103(1)(b) to a police officer not in uniform, so it can be exercised after the event on any person who has driven a vehicle on the road while disqualified.

**Clause 43(1)** creates a statutory power of arrest for an offence under section 163 of the *RTA 1988*, the failure to stop a vehicle when required to do so by a constable in uniform. A new subsection (4) is inserted in the *RTA 1988* to provide a constable in uniform the power to arrest without warrant a person he has reasonable cause to suspect has

committed an offence of failing to stop a vehicle when required to do so by a constable in uniform. The power is not to be extended to constables not in uniform nor to offences committed before commencement of the Bill.

**Clause 43(2)** provides a constable in uniform with the power to enter and search premises for the purpose of effecting an arrest under section 163 of the *RTA 1988*, by adding a new subparagraph to section 17(1)(c) of *PACE*. A uniformed officer could rely on this power to arrest, at some later point, a suspect who may have left the scene of a crime.

### 3. Drink driving

Chapter 1 of Part II of the *Transport and Works Act 1992 (TWA)* deals with offences involving drink or drugs on particular transport systems. The provisions are analogous to those which apply under road traffic legislation to driving with excess alcohol. In particular, the power to arrest without warrant contained in section 30(2) of the *TWA* uses identical wording to that in section 6(5) of the *RTA 1988* at present. A person arrested under either section 30(2) of the *TWA* or section 6(5) of the *RTA 1988* is not being arrested “for an offence”, but on suspicion of having committed an offence as a result of a positive breath test. This is significant in respect of the provisions of *PACE* dealing with detention. However section 34(6) of *PACE* provides that a person arrested under section 6(5) of the *RTA 1988* is to be treated under *PACE* as if he had been arrested for an offence. That ensures that all the normal *PACE* provisions apply in regard to treatment in custody. It also ensures that where a positive breath test is provided the person can be charged and detained or bailed under *PACE*. There is no similar provision under the *TWA*. This has led to doubt as to whether there is a power to charge a person under *PACE* and then use the relevant *PACE* powers to detain or bail him/her. **Clause 47(1)** is a technical amendment intended to remove this loophole. It inserts into section 34(6) of *PACE* reference to section 30(2) of the *TWA* so that all the normal *PACE* provisions apply to the *TWA* as well as to the *RTA 1988*.

**Clause 47(2)** removes another anomaly between the *TWA* and *RTA 1988* in connection with the taking of blood or urine samples from persons in custody. Under *PACE* the taking of intimate samples such as blood and urine must be authorised by a superintendent. Road traffic cases are exempt from this requirement but the exemption does not apply under the *TWA*. This clause amends section 62(11) of *PACE* to include a reference to the relevant sections of *TWA* so that the taking of specimens under the *TWA* does not require the prior authorisation of an officer of at least the rank of superintendent.

As discussed above, under current legislation consent is required to take a blood sample from a driver. But there have been a number of instances where a person has been killed or seriously injured in an accident where it has not been possible to take a specimen from the driver because the driver has been either unconscious or so injured as to be unable to give consent. This has meant that there has been no evidence available to support an appropriate drink driving prosecution. **Clause 49** of the Bill will allow a blood sample to

be taken from such a driver. It has been reported that many MPs and families of the victims of such road accidents had made representations to the Home Office about this loophole.<sup>124</sup>

In 1999 the parliamentary research departments in the other EU member states were asked whether in these countries the taking of blood from a driver after a road accident was allowed without consent. In those EU countries from which information was received, the taking of blood without consent was permitted if it was suspected that the driver had been drinking, in Germany, Portugal, Netherlands, Belgium, Finland, and probably in Sweden, although there it had not been tested in the courts.

#### 4. Seizure of motor vehicles

**Clauses 52 and 53** give the police new powers to deal with the anti-social use of motor vehicles on public roads or off-road. If roads or open spaces are used as unofficial racetracks it can cause alarm and distress to residents. Particularly on private land, where the owner is absent, the police have not been able to stop any anti-social use of vehicles on such land. Under **clauses 52 (1) and (3)** the police will be empowered to seize and to remove vehicles where they are being driven off-road contrary to section 34 of the *RTA 1988*; or on the public road or other public place, without due care and attention or reasonable consideration for other road users, contrary to section 3 of the *RTA 1988*. The powers will not be exercisable until regulations under **clause 53** of the Bill are in force. **Clause 52(3) and (7)** provide that an officer may enter premises, though not a private house, for the purpose of exercising these powers. It is an offence under clause 52(6) for a person to fail to stop a vehicle when requested to do so by a police officer. **Clause 53** allows the Secretary of State to make regulations relating the removal, retention, release and disposal of vehicles seized under clause 52.

#### 5. Taking of blood samples: reaction from the British Medical Association and Liberty

Although broadly welcoming the Bill's proposals relating to taking blood samples from people suspected of offences under the *Road Traffic Act 1988*, the British Medical Association (BMA) has expressed some reservations:<sup>125</sup>

These clauses make certain provisions concerning the taking of blood samples from persons suspected of having committed an offence under s.7 Road Traffic

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<sup>124</sup> "Grieving mother wins fight to change drunk driver test law" *Daily Telegraph* 4 March 2002

<sup>125</sup> *Police Reform Bill Clauses 48-51 - Blood Specimens*: Briefing paper by the British Medical Association for Lords' Second Reading Tuesday 5 February 2002

Act 1988. The BMA supports the overall objective of these measures but has a number of concerns, the:

- assessment of competence for the sample to be taken,
- ability of the clinical team treating the patient to prohibit samples from being taken
- validity of consent for testing
- testing for drugs

### **Assessment of competence for the sample to be taken**

Under s.11(4) Road Traffic Act 1988, a person must consent before a blood sample may be taken, if he does not consent the person taking the sample will be committing an offence. To take a sample without consent could constitute an assault. Consequently if a person cannot give consent there can be no specimen, this can sometimes deny the police the necessary evidence to consider initiating a prosecution.

Clause 49 of the Bill addresses the taking of specimens from persons incapable of consenting. The BMA is concerned that the operation of the clause is dependent upon a police constable assessing that *a person's incapacity is attributable to medical reasons*. This requires that a constable assess the capacity of a person, which is by no means straight forward especially as potentially they might be suffering from the consequences of an accident; furthermore the constable is required to make a judgement as to whether the person's inability to consent is for medical reasons. How would a constable differentiate between incapacity caused by concussion, or by shock, or by drink or drugs or a pre-existing medical condition? Given the inherent difficulties in assessing capacity it is by no means certain that, should a constable opt under clause 48 of this Bill for a registered nurse to take a blood sample, the nurse would have received the necessary training to assess the capacity of the person with a view to consent.

Given that it is an offence for a competent person to refuse to provide a sample, it is important to ensure that any refusal is a competent refusal. Such are the difficulties in assessing capacity that the BMA considers that the doctor taking the sample must have held full registration for a minimum of 5 years. Such doctors should also have the necessary experience to assist the police in the often difficult situations that can occur.

The ability of the clinical team treating the patient to prevent samples from being taken

Under s.9 Road Traffic Act 1988, provision is made to protect a person who is a patient at a hospital from having to provide a specimen of breath or blood for a laboratory test unless the medical practitioner in charge of his case does not object. A medical practitioner might object if he considers that to provide a specimen would be prejudicial to the care and treatment of the patient.

The BMA considers that this protection should be extended to the care and treatment of a person from the moment they come under the care of any member of the health team, including the ambulance and paramedic services and any

healthcare professional assisting in either a voluntary or official capacity. The overwhelming ethos for health care professionals must be to ensure the provision of the best care to that person.

### **Validity of consent for testing**

Clause 49(1) of the Bill seeks to amend s.7 of the Road Traffic Act 1988 to provide that although a specimen may have been taken from a person it shall not be tested until the person has given consent to testing. The clause does not make clear that consent can only be given by the person once they have regained the capacity to do so. The BMA considers that before the person can give consent an assessment of capacity should be carried out by a medical practitioner.

### **Testing for drugs**

Driving is a complex task where the driver continuously receives information, analyses it and reacts. Substances that have an influence on brain function or on mental processes involved in driving will clearly affect driving performance.

Current research continues to investigate the broad spectrum of issues that require investigation if the detection of drugs whilst driving is to be addressed. These range from how to detect levels of drugs in the body, how to detect impairment, the level of each drug that can effect driving performance, and the timescale over which each drug remains in the body. The complexity of developing reliable testing devices for drugs is an onerous task. Unlike tests to detect impairment from alcohol that are based on clinical understanding of the metabolic rate and excretion from the body as well as dose related neuropsychological impairment, comparable tests to detect drug levels in the body remain elusive. This is due to the differing effects on the body, and the length of time remaining in the body, of the diverse assortment of drugs that are taken illegally and legally by drivers. In addition the effects of those drugs on driving performance may not be as simple and predictable as the effects of alcohol. There must be scientific clarity before law identifies certain levels as "illegal".

In the year 2000, training was introduced for police officers to detect impairment through the use of roadside tests (currently voluntary for drivers). These tests will not prove impairment, but will provide officers with a basis for deciding whether or not to consider initiating a prosecution under s.4 Road Traffic Act 1988.

Liberty too expressed concerns:<sup>126</sup>

This is a major departure with real implications for people's rights to control over their physical integrity. There is a difficult balance to be struck between this and the public safety issues: this proposal doesn't get that right. Sticking needles in

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<sup>126</sup> *Blunkett's Police Complaints Reform Falls Short: Initial response to Police Reform Bill 25th January 2002* : Liberty 2002 – available at <http://www.liberty-human-rights.org.uk/>

unconscious people without their consent and for no medical purpose isn't the way forward.

We would at the very least call for the development of a less invasive option (eg saliva testing), guarantees that the person's medical treatment will never be interrupted or jeopardised by this testing requirement, and extensive safeguards. These should include the subject's option to refuse to have the sample tested on regaining consciousness - to parallel a person's existing right to refuse to give a sample.

## **B. The British Transport Police: Clauses 54 and 55**

### **1. Background**

The British Transport Police (BTP) are the national police force for the railways throughout England, Scotland and Wales. The force is also responsible for policing the London Underground, the Docklands Light Railway, the Croydon Tramlink and the Midland Metro. Its main activities include law and order policing, maintaining the Queen's peace and protecting the staff and public on the railways. The force deals with all crimes, including murder, violence, sexual offences, robberies, thefts and fraud, and other incidents including accidents, fatalities and suicides.

On 31 July 1998, the Government announced its intention to introduce legislation about the BTP with the following objectives:<sup>127</sup>

- to create an independent national police authority for the force;
- to place the jurisdiction of the BTP over the railways on a statutory basis;
- to give the BTP jurisdiction outside the railways in certain circumstances.
- to bring the BTP within the scope of certain police legislation which currently provides powers to other police forces but excludes the BTP.

On 11 October 2001 the Department of Transport, Local Government and the Regions (DTLR) published a consultation document on the future of the BTP, which gave details of the history and powers of the BTP on which the next paragraphs draw.<sup>128</sup>

The history of the force can be traced back to 1825, to the start of the railways in Britain and the beginning of modern policing. As the railway network spread across the country in the 19th century and criminals discovered that offences could be committed on the move with rapid means of escape - in the same way that the modern motorway network

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<sup>127</sup> *British Transport Police to get independent control* DETR press notice 31 July 1998

<sup>128</sup> *Modernising the British Transport Police: A consultation paper* DTLR 11 October 2001

has created similar opportunities - the need for a dedicated mobile police force, able to cross county boundaries, became evident. The network nature of the railway system also means that incidents affecting its operation in one location can reverberate down the system, creating knock-on effects for thousands of people many miles away. That is why the railway has special policing needs and why it has been thought that a national police force for the railways is a cost-effective solution. There are now 2,101 officers and 83 special constables serving in the BTP and 624 civilian employees working for the force. In terms of size, that puts the force about middle ranking when compared with the 43 Home Office forces in England and Wales. The BTP dealt with almost 70,000 crimes in 2000/01 and 43,000 minor offences. They had an annual budget of £123 million in 2000/01 and a capital budget of £5 million. The force adopts Home Office police standards and procedures and it maintains close contact with local police forces. The selection process for BTP officers mirrors the requirements for all other police forces with some higher standards imposed in terms of eyesight due to the working environment. Chief officers are members of the Association of Chief Police Officers (ACPO).

Training at all levels of the force, from recruits through specialist policing and the highest levels of management, is conducted alongside all other police forces. Because of the specialist environment, additional training has to be undertaken. That includes officer protection, track safety and management of major railway incidents. Under the *Transport Act 1962* the British Railways Board (BRB) were required to prepare a scheme, for approval by the Secretary of State, concerning the organisation, control and administration of the BTP. The *Railways Act 1993* transferred these powers direct to the Secretary of State and they were used to amend the existing scheme in 1994.

The scheme required that the BRB appoint a Committee to secure an adequate and efficient police service for the railway network. The Committee appoints the Chief Constable who is responsible for the administration of the force, but it is a duty of the Committee to supervise this administration and to give the Chief Constable such directions as may be necessary for that purpose.

The Strategic Rail Authority (SRA) was formally established under the *Transport Act 2000*, on 1 February 2001. The SRA has inherited the functions of the BRB and the Office of Passenger Rail Franchising. The SRA has also inherited from the BRB all the duties, functions and liabilities regarding the BTP and operates in a very similar way. This is intended to be a short-term measure. The Government believes that the SRA is not an appropriate long-term home for a modern police force with responsibility for public policing, and that the BTP needs more direct public accountability.

The consultation document pointed out that the BTP have most of the powers and privileges of a Home Office police force but were excluded from a number of items of police legislation. This ranged from the routine, such as issuing fixed penalty notices for traffic offences under the *Road Traffic Offenders Act 1988*, to extensive powers under the

*Terrorism Act 2000*. The document referred to a report by Her Majesty's Inspectorate of Constabulary (HMIC)<sup>129</sup> which had noted that this reduced the effectiveness of the BTP.

## 2. Additional powers of BTP

The *Anti-terrorism, Crime and Security Act 2001*, passed in December 2001, implemented the proposals relating to the jurisdiction of the BTP, recommended in the consultation document, and brought the BTP within the scope of certain police legislation which previously provided powers to other police forces but excluded the BTP.<sup>130</sup>

**Clauses 54 and 55** of this Bill bring the BTP within the powers of section 16 of the *Crime and Disorder Act 1998*, allowing a police constable to remove truants from public places, and section 51 of the *Road Traffic Offenders Act 1988*, relating to fixed penalty offences. The reasons why it is considered necessary for the BTP to be given these powers were discussed in the DTLR consultation document as follows:<sup>131</sup>

### **Crime and Disorder Act 1998**

#### *Section 16*

6.7 A police officer of superintendent rank or above may direct that constables may remove young persons who are believed to be playing truant to premises designated for that purpose by a local authority. The BTP are excluded as the powers are linked to the concept of a 'police area', as defined by the Police Act, which does not apply to the BTP. Currently a BTP constable can only remove truants from the railway if directed by a local police force superintendent.

#### *Why the powers are required*

6.8 Powers are needed to deal with the large numbers of truants who congregate around the railways. Large groups of teenagers can be intimidating to other passengers and their presence is likely to increase the potential for antisocial behaviour and crime, including graffiti. Children are also responsible for a considerable amount of vandalism and trespass, which are the major cause of railway accidents. Individual children may also be at risk at certain major stations from undesirable individuals including drug-dealers and sex offenders.

6.9 In major cities truants congregating on railway property may not attend a local school. In such circumstances, removal back to the relevant school is impractical and enabling the BTP to remove them to designated premises would at least enable the identification of the individual and the child's school.

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<sup>129</sup> HMIC, *1998 Inspection: British Transport Police*, paragraph 1.8,

<sup>130</sup> specifically ss 100-101 of the Act; for more details see Library research paper 01/97

<sup>131</sup> Chapter 6

## **Road Traffic Offenders Act 1988**

### *Section 51*

6.24 This allows certain offences to be dealt with by fixed penalties. The powers are linked to the concept of a 'police area', as defined by the Police Act, which does not apply to the BTP.

### *Why the power is required*

6.25 BTP officers deal with a number of offences that Home Office police officers deal with by means of a fixed penalty. The use of full process reduces the time available to an officer to protect the public. Of particular importance are level crossing offences. The installation of cameras on level crossings as part of a clampdown on this cause of rail accidents will lead to additional cases.

## **3. Anti-social behaviour orders (ASBOs)**

The police reform white paper mentioned the possibility of widening the circumstances in which anti-social behaviour orders (ASBOs) could be imposed and increasing the number of organisations which could apply for them. In January 2002 the Home Secretary announced in a speech at a conference of chief police officers that he was considering extending the power to apply for ASBOs to the BTP as well as speeding up the procedure involved in obtaining them.<sup>132</sup> He outlined the following proposals in respect of ASBOs:

- An interim Anti-Social Behaviour Order – to enable immediate action to be taken prior to going through the full process. The Order would be made at the first court appearance, pending a full hearing. This would enable the community to be protected from a persistent offender without delay.
- An Anti-Social Behaviour Order which would “travel” with the person on whom it is served. This will tackle the problem of people moving to other areas and resuming their anti-social behaviour.
- Looking to extend the scope of the Orders by allowing registered social landlords and the British Transport Police, to apply. Both will be required to consult the local authority quickly and simply, as well as the police, in the area in which the behaviour has occurred.
- Exploring with the Lord Chancellor’s Department to see if there might be a role for County Courts in making Orders, for example where the court is dealing with applications for evictions or injunctions.

The BTP said in its response to the white paper that plans to simplify the process for obtaining ASBOs would be a major step forward. These proposals were not in the original Bill but during the second reading debate in the House of Lords, Lord Rooker

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<sup>132</sup> *Home Secretary Tells Police – You Can Make A Difference* Home Office press release 29 January 2002

announced that government amendments to the Bill would be introduced at a later stage.<sup>133</sup>

#### 4. Complaints

The BTP in its response to the white paper welcomed the proposal to formalise the arrangements regarding police complaints. The new IPPC will have broadly the same remit over the BTP as over home police forces. **Clause 10(1)(f)** of the Bill provides for the new police complaints commission to carry out the functions laid down in regulations in relation to bodies of police constables maintained otherwise than by police authorities. **Clause 10(3)** provides that any regulations relating to the functions of the IPPC in connection with disciplinary proceedings can apply to the BTP.

## IX *Police Reform Bill: the Ministry of Defence Police*

### A. Background

The Ministry of Defence Police (MDP)<sup>134</sup> is a national civilian police force whose key role is the investigation and prevention of crime within the defence estate. Its jurisdiction is defined in the *Ministry of Defence Police Act 1987*. Its officers have full constabulary powers within the area of their jurisdiction, and all uniformed officers are firearms trained.

The MDP was formed in 1971 from the unification of separate service constabularies. It became an MoD Agency in 1996 and the force is headed by a Chief Constable who is also the chief executive of the Agency. Since 1987 MDP officers have had the authority to operate on property in the vicinity of defence land when an officer from a local force requests them to do so but otherwise the jurisdiction of the MDP is confined to the defence estate and Crown property.

As of October 2001 the MDP employed 3,437 police officers, down from a strength of 5,000 in 1987, and it is planned that it will continue to reduce, to about 3,000 by 2005.<sup>135</sup> This reduction has arisen from a decision that some of the armed guarding posts currently

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<sup>133</sup> HL Deb 5 February 2002 Col 514

<sup>134</sup> The MDP should not be confused with the Service Police (also known as military police), which act as the specialist police forces of the armed forces and are manned by Service personnel. The Service Police comprise: the Royal Navy Regulating Branch; the Royal Marines Police; the Royal Military Police; and the Royal Air Force Police.

<sup>135</sup> HC Deb 22 November 2001 Col 380W

filled by MDP officers should be manned instead by the new Military Provost Guard Service of locally engaged Service personnel. The grounds for this decision were that police officers with full constabulary powers were over-qualified for a straightforward guarding role and that using personnel specifically engaged for guarding duties would provide a more appropriate and cheaper option. The reduced number of MDP officers has affected the way they perform their duties: the MDP now includes 16 area policing teams, each covering a number of MoD establishments. The force makes increased use of mobile patrols, involving travel between defence establishments, which has brought MDP officers into greater contact with the public than was previously the case.

## **B. The *Anti-Terrorism, Crime and Security Act 2001*<sup>136</sup>**

The *Anti-Terrorism, Crime and Security Act 2001* introduced a number of reforms to the way in which the MDP operates. The key changes involved: allowing the MDP to act outside MoD land when asked by a local police force; permitting the MDP to act outside MoD land when responding to a specific incident and in an emergency; and allowing the MDP to provide assistance, on request, to other forces, and extend to them certain powers contained in the *Terrorism Act 2000*.

Further details of these changes can be found in Library Research Paper 01/97, *The Anti-Terrorism, Crime and Security Bill: Part X: Police Powers*, of 16 November 2001. The Defence Select Committee also produced a report, 'The Ministry of Defence Police: Changes in Jurisdiction Proposed under the Anti-Terrorism, Crime and Security Bill 2001', 5 December 2001, HC 382, Session 2001-02. The Government response to this report was published on 1 February 2002.<sup>137</sup>

## **C. The *Police Reform Bill* [HL]**

The White paper, 'Policing a New Century: A Blueprint for Reform', of December 2001, outlined the key future changes proposed to the workings of the MDP:

The Government will be making statutory provision to allow other police forces such as the Ministry of Defence Police and British Transport Police to operate outside their own jurisdiction either at the request of the local police force or in an emergency.<sup>138</sup>

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<sup>136</sup> Royal Assent 13 December 2001 (Ch 24, 2001)

<sup>137</sup> 'The Ministry of Defence Police: Changes in Jurisdiction Proposed Under The Anti-Terrorism, Crime and Security Bill 2001: Government Response', 13 February 2002, HC 621, Session 2001-02.

<sup>138</sup> 'Policing a New Century: A Blueprint for Reform' Chapter 4, paragraph 13.

It goes on to state:

Although most police forces are governed by the Police Act 1996, there are a small number of specialised police forces which nonetheless have an important contribution to make. These include the Ministry of Defence Police, responsible for military sites, and the British Transport Police with powers limited to railway property. These non-Home Office police forces will be brought within the scope of the new police complaints system.<sup>139</sup>

These proposals and others are detailed below:

## 1. Part 5: The Ministry of Defence Police

### **Clause 56: Ministry of Defence Police Serving with other forces**

This clause inserts a new Section 2B in the *Ministry of Defence Police Act 1987*. The new section relates to the situation where MDP officers serve with other forces under arrangements such as secondments. According to the Explanatory Notes, the clause “provides that they come under the direction of the chief officer of the force with which they are serving for the time being and have the full powers of a constable of the force, (i.e. without the jurisdictional limits that apply to MDP officers).”

### **Clause 57: Disciplinary matters**

This clause aims to align disciplinary procedures for the MDP as closely as possible with those of Home Department police forces. At present the Secretary of State for Defence has the power to dismiss a member of the MDP and has no power to transfer to an outside body the function of deciding the imposition of penalties. Home Department forces, however, allow the review and appeal of disciplinary cases by individuals outside the force.

*Subsection (1)* allows disciplinary decisions to be made by persons outside the MoD and MDP. Regulations will be made under this clause using statutory instruments subject to the negative resolution procedure. The intention is for regulations to be aligned with those of Home Department Forces.

*Subsection (2)* provides members of the MDP who have been subject to disciplinary proceedings with the right of appeal to a tribunal. According to the Explanatory Notes:

the new section empowers the Secretary of State to make by order provision for the composition and procedures of the appeals tribunal corresponding to the relevant enactments for Home Department police forces (subject to modifications).

*Subsection (3)* allows the powers of the Ministry of Defence Police Committee (which are at present only advisory) to be extended, so that it may be appointed to take certain decisions in the disciplinary process. The Defence Select Committee raised the issue of the Police Committee's accountability in its report of 5 December 2001:

The Head of MDP Secretariat told us that one of the functions of the current quinquennial review of the MDP would be to look at the 'role, membership and functions' of the MoD Police Committee. We would hope that that process will result in further changes in the composition of the MoD Police Committee which will better reflect the broadening of the MDP's role and, in particular, the increased contact with the general public which is likely to result from the Bill's proposals. During Committee stage of the Anti-Terrorism Bill, the Minister agreed that 'greater accountability should go with wider powers' and said that 'everything that can be done to improve the accountability of the MDP police force will be done'. He raised the possibility of the MoD Police Committee holding its meetings in public, which the Chief Constable of the force supports. **We accept the argument that greater powers for the MDP must be accompanied by greater accountability. We intend to monitor developments to ensure that Ministers' undertakings in this respect are followed through.**<sup>140</sup>

In its response to the Defence Committee report, the Government stated:

Three independent members have recently been added to the MOD Police Committee. Its role and composition are currently being reviewed as part of the on-going Quinquennial Review of the MOD Police Agency.<sup>141</sup>

### **Clause 58: Functions of inspectors of constabulary**

At present the MDP is inspected by Her Majesty's Inspectors of Constabulary (HMIC) on a non-statutory basis by invitation. This clause introduces section 4B, which puts these inspections by HMIC on a statutory basis as recommended by the Defence Select Committee.<sup>142</sup> Section 4C provides for the publication of the Inspector's report on the MDP.

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<sup>139</sup> *ibid*, Chapter 4, paragraph 4.33,

<sup>140</sup> Defence Committee, 'The Ministry of Defence Police: Changes in Jurisdiction Proposed Under The Anti-Terrorism, Crime and Security Bill 2001', para 28, 5 December 2001, HC 382, Session 2001-02.

<sup>141</sup> 'The Ministry of Defence Police: Changes in Jurisdiction Proposed Under The Anti-Terrorism, Crime and Security Bill 2001: Government Response', 13 February 2002, para 4, HC 621, Session 2001-02.

<sup>142</sup> Defence Committee, 'The Ministry of Defence Police: Changes in Jurisdiction Proposed Under The Anti-Terrorism, Crime and Security Bill 2001', p xxii, 5 December 2001, HC 382, Session 2001-02.

## Clause 59: Exemptions from firearms legislation

This clause deals with the use of firearms by MDP recruits. The clause amends the firearms legislation applicable in Great Britain and Northern Ireland, so as to allow potential recruits to the MDP to use firearms without a certificate while under training. Potential recruits to the MDP take a firearms aptitude test, which according to the Explanatory Notes, “involves ‘possession’ (in the sense used in the firearms legislation) of a firearm, which is generally unlawful without a firearms certificate.”<sup>143</sup>

The Defence Select Committee report of 3 December 2001 commented on the quality of the MDP’s firearms training:

The effectiveness of the MDP’s firearms training and procedures is demonstrated by their safety record. The MDP have had 1.4 million loads and unloads of weapons in the past year without a single negligent discharge: we regard this as highly commendable and an achievement of which the MDP can justifiably be proud.<sup>144</sup>

## X Consideration of the Bill in the Lords

Because of the length of the Lords debate and the number of issues raised, this section of the paper seeks to focus on some of the most salient and contentious issues. It deals with the Lords’ discussions up to 5 March 2002. Developments after that date will be discussed in the standard note which will update this research paper before second reading in the Commons.

### A. The second reading debate

The Bill had its second reading in the Lords on 5 February 2002.<sup>145</sup>

In summarising the Bill, the Minister for Citizenship and Immigration, Lord Rooker argued that the provisions of Part 1 of the Bill – giving new powers to the Home Secretary – were necessary to address inconsistencies within and between individual police forces. This was not (he said) about centralising or politicising the police

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<sup>143</sup> *Police Reform Bill [HL]*, Explanatory Notes, 24 January 2002.

<sup>144</sup> Defence Committee, ‘The Ministry of Defence Police: Changes in Jurisdiction Proposed Under The Anti-Terrorism, Crime and Security Bill 2001’, para 48, 5 December 2001, HC 382, Session 2001-02.

<sup>145</sup> HL Deb 5 February 2002 Col 506 - 534

service.<sup>146</sup> Chief officers would continue to take the leading role in managing their police force effectively; there was no provision for the Home Secretary to take over the management of a force or to despatch a “hit squad” to run it.<sup>147</sup> On complaints, the new system would deliver greater openness and certainly better accessibility and independence – particularly as there would now be three levels of appeal.<sup>148</sup> The proposals for dealing with the removal, suspension and discipline of police officers should be seen in the context of nurturing top quality leadership for the police.<sup>149</sup>

The measures in Part 4 of the Bill were, according to Lord Rooker, a recognition that the police could not fight crime alone and that police officers’ time had to be used to best effect. The Home Office research *Diary of a Police Officer*<sup>150</sup> had revealed that police officers spent nearly half their time in the police station rather than on the street.<sup>151</sup> Greater use of police support staff should reduce the time spent on paperwork and boost “reassurance patrolling”. Lord Rooker went on to describe the likely roles of community support officers<sup>152</sup> and, lastly, confirmed that the Government intended to bring forward amendments to strengthen the effectiveness of anti-social behaviour orders.<sup>153</sup>

Responding for the Conservatives, their Home Affairs spokesman Lord Dixon-Smith supported the Government’s wish for a more professional and effective police service.<sup>154</sup> Although he was confident that the current Home Secretary and his Ministers would not “run amok with the powers in the Bill”, it was (he said) the duty of the Lords to consider how the Bill’s powers might be used by others less honourable or straightforward.<sup>155</sup> That the Bill had been published only days after the deadline for comments on the White paper suggested that the Government had not given proper consideration to those comments.

On the question of the tripartite relationship and the roles of the Home Secretary and police authorities, Lord Dixon-Smith pointed out that the Home Secretary provided the bulk of funding for the police and that “he who pays the piper calls the tune”. Generally, the tripartite relationship had worked well, although the *Police Act 1996* had already altered the balance by giving the Home Secretary power (inter alia) to set objectives and performance targets and to direct minimum budgets. Giving the Home Secretary power

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<sup>146</sup> HL Deb 5 February 2002 Col 507-8

<sup>147</sup> HL Deb 5 February 2002 Col 509

<sup>148</sup> HL Deb 5 February 2002 Col 510

<sup>149</sup> HL Deb 5 February 2002 Col 510

<sup>150</sup> PA Consulting Group (2001) *Diary of a Police Officer* Home Office Police Research Series paper 149 – available at <http://www.homeoffice.gov.uk/rds/prgpdfs/prs149.pdf>

<sup>151</sup> HL Deb 5 February 2002 Col 511

<sup>152</sup> HL Deb 5 February 2002 Col 512

<sup>153</sup> There is a separate standard note on anti-social behaviour orders: SN/HA/1656

<sup>154</sup> HL Deb 5 February 2002 Col 514

<sup>155</sup> HL Deb 5 February 2002 Col 515

to set a national police plan would, he suggested, further weaken devolution.<sup>156</sup> He went on to argue:<sup>157</sup>

Micro-managing from the centre – and the idea that Whitehall knows best - does not work. One needs only consider matters such as education, health and transport to see that the one-size-fits-all approach that a national plan produces does not recognise the reality of what happens on the ground.

He also expressed doubts about giving police powers to civilians and described some of the Bill’s provisions as “worrying” and too complex.<sup>158</sup>

Lord Bradshaw (Liberal Democrat spokesman on transport and a member of the Thames Valley Police Authority) suggested that the police authority was not as out of touch with what people wanted as Home Office officials and Ministers appeared to be.<sup>159</sup> The Bill’s centralising aspects would undermine police authorities. The Best Value regime,<sup>160</sup> coupled with the role of HM Inspectorate of Constabulary and the district auditor, already provided a framework for setting and monitoring standards.<sup>161</sup> Lord Bradshaw argued that:<sup>162</sup>

Along with Magna Carta, policing by consent is one of the touchstones of our unwritten constitution. It is a bulwark against a police state. Policing by consent has many facets. One aspect, which we proudly describe as unique, is the tripartite system of police governance.

[...]

In our view, the Bill contains proposals that would radically shift the balance away from local people and local accountability towards greater central direction and control by the Home Secretary. Many saw the 1994 Act as a centralising measure. The Bill goes considerably further, but does so in a more opaque way. In our view it is a retrograde step, taking us away from a policing service that should seek to be more sensitive to the views of local communities.

On failing police forces, he argued:<sup>163</sup>

No one would question that some communities are not receiving the policing services that they deserve. If we value the tripartite system, should not remedial action be taken in conjunction and co-operation with the police authority, whose

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<sup>156</sup> HL Deb 5 February 2002 Col 516

<sup>157</sup> HL Deb 5 February 2002 Col 517

<sup>158</sup> HL Deb 5 February 2002 Col 517-8

<sup>159</sup> HL Deb 5 February 2002 Col 518-9

<sup>160</sup> introduced by the *Local Government Act 1999*

<sup>161</sup> HL Deb 5 February 2002 Col 519

<sup>162</sup> HL Deb 5 February 2002 Col 519

<sup>163</sup> HL Deb 5 February 2002 Col 520-1

job is to monitor and manage local police performance? Should the Home Secretary bypass those people and intervene directly in the chief constable's affairs? How does that impact on the long-established doctrine of operational independence?

Lord Bradshaw too expressed concern at giving police powers to non-police staff and questioned whether this was really what communities wanted. He was "dismayed" that they would have the power to conduct intimate searches.<sup>164</sup> He also noted that the Bill was silent about the problem of police pensions and the future of the Special Constabulary.<sup>165</sup>

Lord Condon (a crossbencher and former Commissioner of Police of the Metropolis) offered the view that the Bill provided some long overdue measures for reform and was to be broadly welcomed.<sup>166</sup> Its most welcome feature was the creation of the Independent Police Complaints Commission, which might assuage public concern about the integrity and thoroughness of the complaints process whilst also providing better protection for police officers under investigation. Yet the inevitable shift in the balance within the tripartite relationship which the Bill would create risked marginalising chief officers and police authorities. The role of the Government in managing police forces should be confined to overseeing a values-driven devolved system.<sup>167</sup>

Lord Condon went on to argue that the proposals enabling chief officers to employ community support officers should not be dismissed out of hand. Chief officers could choose whether to use the powers. The Metropolitan Police, for example, was likely to find such powers useful in policing London in the aftermath of the terrorist attacks of 11 September 2001. Rural police forces, in contrast, might prefer to recruit police constables rather than community support officers. He pointed to New York as an example of successful change in policing:<sup>168</sup>

The improvements in crime reduction, public safety and public confidence in New York are real and startling, and they are attributed to strong political and police leadership, tough performance standards and review, and, importantly, a dramatic increase in resources. Metropolitan Police numbers peaked in about 1991-92 at just under 29,000 police officers. As of today, there are about 26,450 police officers for London. At one stage, the New York Police Department manning level dropped to about 25,000 police officers, for a city with approximately the same population size as London's. However, under a new mayor and a new commissioner and with new resources, New York police numbers increased to 42,000. As I said, as of today, there are 26,450 police officers in London, but 42,000 in New York. Resources will make a difference.

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<sup>164</sup> HL Deb 5 February 2002 Col 522

<sup>165</sup> There is a separate standard note on special constables: SN/HA/1154

<sup>166</sup> HL Deb 5 February 2002 Col 524

<sup>167</sup> HL Deb 5 February 2002 Col 525

<sup>168</sup> HL Deb 5 February 2002 Col 526

Joining the debate, Lord Harris of Haringey (chair of the Metropolitan Police Authority) suggested that a national policing plan was entirely logical, given that under the tripartite structure responsibility for national accountability and overall standards rested with the Home Secretary.<sup>169</sup> The Home Secretary's proposed power to make regulations on operational practice was not problematic.<sup>170</sup> He noted, however, that the Bill maintained the exclusion of complaints about the direction and control of a force, which would remain outside the IPCC's scope as they were for the PCA:<sup>171</sup>

The only omission that I can see is what appears to be an exclusion of complaints about the direction and control of a force. I do not see why that cannot be included within the terms of reference of the IPCC.

Lord Harris welcomed the Bill's provisions for community support officers. In London, as well as improving public reassurance and giving the police a more visible presence on the streets, this was likely to boost recruitment from the ethnic minorities:<sup>172</sup>

At present, 40 per cent of special constables recruited for the metropolitan area are from black and ethnic minority communities. The figure for those entering the Metropolitan Police is only 11 per cent. It is possible, therefore, that using such intermediate steps might attract more recruits from black and ethnic minority communities, which is an important priority in London. The issue is reassurance with consent, which is why the proposals are so important.

The former Home Secretary, Lord Waddington raised the issue of fear of crime. It was unsurprising that fear of crime was high, given that the police had (he said) retreated from the streets. The prospect of "quasi police officers" patrolling the streets without the full range of police powers was not attractive: it would lead to two tier policing and (perhaps) pressure from the Treasury to recruit more community support officers and auxiliaries and fewer police officers.<sup>173</sup>

The former Solicitor General and Attorney General, Lord Mayhew suggested that it was no bad thing for the Home Secretary to be answerable to Parliament for any apparent failure of policing:<sup>174</sup>

... it is a very good and essential thing. He, after all, is statutorily responsible for the efficient policing of England and Wales. [...] The Home Secretary cannot be expected to carry the can unless he is in a position ultimately to influence how policing is carried out by chief officers. So a balance has to be established.

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<sup>169</sup> HL Deb 5 February 2002 Col 527

<sup>170</sup> HL Deb 5 February 2002 Col 528

<sup>171</sup> HL Deb 5 February 2002 Col 529

<sup>172</sup> HL Deb 5 February 2002 Col 530

<sup>173</sup> HL Deb 5 February 2002 Col 531-2

<sup>174</sup> HL Deb 5 February 2002 Col 558

He also suggested that further scrutiny should be given to the Bill's provisions for enforcing chief officers' involuntary departure.

Lord Mackenzie of Framwellgate, the former president of the Police Superintendents' Association, drew attention to the unique status of police officers:<sup>175</sup>

The police are different from other workers and play an important part in our democracy. What singles them out from other employees? First, there is the importance of the job itself. No civilised society can function without the enforcement of the law and the maintenance of order in a way that is acceptable to the populace. That point has been made by your Lordships. Secondly, there is the statutory prohibition of industrial action as a bargaining chip. It is extremely important, therefore, that all governments treat their police force honourably and do not lose sight of that point.

He argued that police complaints were already investigated exhaustively, but nevertheless justice had not always been seen to be done. The Bill's new provisions were to be applauded, although it might be beneficial also to add a time limit within which cases – which might otherwise drag on for years – must be resolved..<sup>176</sup>

Lord Phillips of Sudbury argued that a substantial increase in police numbers would pay for itself by reducing the cost of crime and its consequences. Rather than centralise more power to Westminster and Whitehall, the Bill should (he said) have sought to add to police authorities' powers. He was concerned that the Bill contained no provision for controlling the Home Secretary's interventions in the running of a force, other than the existing process for judicial review.<sup>177</sup>

The former chair of the Select Committee on Home Affairs, Lord Corbett of Castle Vale made the case for greater attention to the prevention (rather than detection) of crime.<sup>178</sup> Community support officers could be a part of this process, by supplementing, not replacing, the work of police officers and providing the patrol presence which was currently missing.

The Earl of Rosslyn, a serving Commander in the Metropolitan Police, pointed to the police's need to find new ways to engage with partners, volunteers and the public. Although progress had been made in tackling crime, the public had not been reassured that it was safer:<sup>179</sup>

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<sup>175</sup> HL Deb 5 February 2002 Col 560

<sup>176</sup> HL Deb 5 February 2002 Col 561

<sup>177</sup> HL Deb 5 February 2002 Col 566

<sup>178</sup> HL Deb 5 February 2002 Col 570

<sup>179</sup> HL Deb 5 February 2002 Col 578

That paradox is nowhere more evident than in the findings of the most recent British Crime Survey, to which other noble Lords have referred. That showed that, although the chance of being victimised had fallen to its lowest level for 20 years, fear of crime remained high. More than half of the 2001 sample believed that crime rates had risen in the preceding year, while the survey itself showed a fall of 12 per cent.

The significance of that gap between falling levels of crime and rising degrees of fear has now been recognised as a phenomenon in itself.

He suggested that community support officers would provide some of this reassurance, particularly as the police service should not have to rely exclusively on the goodwill of volunteers. This would result in a “mixed economy”.

Lord Dholakia too expressed concern about how much (or how little) weight had been given to the earlier consultation on the white paper.<sup>180</sup> Although the United Kingdom had the best police service in the world, there was still room for improvement, yet the Bill’s provisions would weaken the tripartite structure and this was a retrograde step. Lord Dholakia referred to the Home Secretary’s demonstrating<sup>181</sup>

an insatiable appetite on the part of the Government to control police functions nationally. [...] Why is it necessary to meddle in the function of [police] authorities?”

In responding to these and the many other comments and observations, Lord Rooker stated that he would not make policy on the hoof.<sup>182</sup> He remarked that some common themes – such as centralisation and the role of the Special Constabulary (not mentioned on the face of the Bill) – would need to be addressed in Committee. At the Committee stage, the Government would produce its evidence of why the Home Secretary needed greater powers and why police powers should be given to other police workers. He repeated that by the spring of 2003 there would be record numbers of police officers, although it was still cause for concern that so much of officers’ time was spent away from the street.<sup>183</sup> He ruled out the option of compulsory ID cards. In concluding, he stated that:<sup>184</sup>

We do not intend to behave as a dictatorship. We intend to work in partnership. As I said earlier, as far as the public are concerned the Home Secretary is the person who will have to stand at the Dispatch Box and be accountable for the police although he does not have operational powers over them. That is an interesting concept and one we support and applaud. However, the Home

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<sup>180</sup> HL Deb 5 February 2002 Col 590

<sup>181</sup> HL Deb 5 February 2002 Col 592

<sup>182</sup> HL Deb 5 February 2002 Col 597

<sup>183</sup> HL Deb 5 February 2002 Col 601

<sup>184</sup> HL Deb 5 February 2002 Col 604

Secretary wants to have some levers to raise standards. That is not to say that all 43 forces will operate in exactly the same way, but the idea of having some plans and a road map, as it were, is a good one.

## **B. The Lords Committee stage**

The Bill entered its Committee stage in the Lords on 28 February 2002.<sup>185</sup>

In discussing the amendments, Lord Rooker indicated that the Government was content to accept the spirit of amendments to Part 1 of the Bill which make more explicit provision for consultation in such areas as preparing the national policing plan. He agreed to take the matter away for further consideration before the Report stage.<sup>186</sup> However, he also argued that there was a “line in the sand”, beyond which the Home Secretary would not go.<sup>187</sup>

In response to fears expressed by Lord Condon and others that, unless the Home Secretary’s views about the ineffectiveness and inefficiency of the police could be backed up by firm evidence, the Home Secretary would be given *carte blanche* to intervene, Lord Rooker again agreed to give the matter further attention. He noted that the Home Secretary was likely, anyway, to draw on sources such as Audit Commission reports.<sup>188</sup>

When the Committee resumed on 5 March 2002,<sup>189</sup> many similar concerns were again expressed about the Home Office “micro-managing” the police service.<sup>190</sup> It was suggested that the Home Secretary might use his powers to give directions to chief officers, to direct them to put community support officers on the beat as a cheaper means of meeting public demands for a more visible patrolling. Lord Rooker disputed this.<sup>191</sup> Lord Condon suggested that, whatever the assurances from the Government, the Bill’s powers could be used in ways that would undermine the tripartite relationship, against the public interest.<sup>192</sup>

Lord Bradshaw’s amendment, which would have made provision for the payment of an annual bounty to special constables, was withdrawn. Lord Rooker undertook to reflect widespread support for and interest in the Special Constabulary:<sup>193</sup>

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<sup>185</sup> HL Deb 28 February Col 1542 – 1598 and 1604 - 1640

<sup>186</sup> HL Deb 28 February Col 1552

<sup>187</sup> HL Deb 28 February Col 1554

<sup>188</sup> HL Deb 28 February Col 1633

<sup>189</sup> HL Deb 5 March 2002 Col 131 – 197 and 214 - 246

<sup>190</sup> HL Deb 5 March 2002 Col 132

<sup>191</sup> HL Deb 5 March 2002 Col 133-4

<sup>192</sup> HL Deb 5 March 2002 Col 160

<sup>193</sup> HL Deb 5 March 2002 Col 181-2

At Second Reading, 15 out of 21 speakers mentioned the Specials. As special constables are not referred to in the Bill, that was an indication that the issue needs to be addressed. Although I am not able to address it now, I have some hopeful words to offer.

[...]

To address the amendments, work is going on in this area. The police authorities already have discretionary power to pay a bounty to Specials with the agreement of the Secretary of State under regulations made in 1992 (SI No. 1526 1992). The provision was introduced to facilitate an experimental bounty scheme in 1993 and has not been repealed.

The Government are considering—subject to the current spending review—the case for paying a fixed allowance to Specials in return for a minimum commitment in terms of hours. No firm decisions have been made, but this could be done by means of an amendment to the regulations. It would not require primary legislation. I want to satisfy the Committee that there is a mechanism already on the statute book which could be used, rather than this Bill. That is an important point. I do not want the Committee to think that, although we are considering the matter and might do something, it is a matter for primary legislation and that we shall have to wait for more parliamentary time. The regulations are already in place.

Three Government amendments were accepted. One would enable the Secretary of State to give directions to police authorities (as well as to chief officers) on the handling of any part of a complaint which touches on the direction and control of a police force by a chief officer or acting chief officer (**clause 14**).<sup>194</sup> Another would amend **clause 24**, by extending the IPCC's powers (in **clause 32**) to participate in disciplinary proceedings to non-Home Office police forces such as the Ministry of Defence Police and British Transport Police.<sup>195</sup> **Clause 25** too was amended, so as require the Secretary of State to make regulations on how complaints against members of the IPCC's staff should be handled: where previously the clause said he *may* make directions, it now says he *shall*.<sup>196</sup>

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<sup>194</sup> HL Deb 5 March 2002 Col 231

<sup>195</sup> HL Deb 5 March 2002 Col 242-3

<sup>196</sup> HL Deb 5 March 2002 Col 244

## ***XI Police Reform Bill: The Joint Committee on Human Rights report***

The *Human Rights Act 1998* incorporated the European Convention on Human Rights into United Kingdom law. There is a separate standard note on the Act.<sup>197</sup>

In its report on the *Police Reform Bill*, the Joint Committee on Human Rights (JCHR) expressed concerns about some aspects of the Bill and the human rights issues which they raised.<sup>198</sup>

Firstly, it was concerned that the Home Secretary would be able to order the use of direct and intrusive surveillance techniques by the Independent Police Complaints Commission in their investigations (**clause 19**), with no express requirement to follow the safeguards of the *Regulation of Investigatory Powers Act 2000*. Likewise, the Committee was concerned that **clause 20** – which provides for complainants to be kept informed of the progress of investigations – did not provide for the corresponding disclosure of documents, even though case law suggested that, where complaints relate to conduct which would amount of a violation of the right to life, Convention rights require disclosure.<sup>199</sup> The JCHR remarked that the explanatory notes did not address the human rights questions raised by the Bill's procedures for suspending chief officers or requiring them to retire or resign (**Part 3** of the Bill) and, in particular, whether Article 6(1) of the European Convention on Human Rights, which defines the right to fair trial, might be engaged.<sup>200</sup>

On **Part 4** of the Bill, the Committee again expressed concern about the adequacy of safeguards where it was proposed to permit people other than constables to exercise police powers.<sup>201</sup> It observed that the rights to life; to be free of degrading treatment; not to be arbitrarily deprived of liberty; to silence; to respect for private and family life, home and correspondence; to be free of discrimination in enjoying other Convention rights and to enjoy one's possessions might all potentially be interfered with. Yet the explanatory notes suggested that only the rights not to be arbitrarily deprived of liberty and to respect for private and family life, home and correspondence had been considered relevant. The Committee questioned whether the Bill should not have spelt out the legitimate aims for which powers could be exercised in accordance with Convention rights and the *Human*

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<sup>197</sup> The *Human Rights Act 1998* SN/HA/519

<sup>198</sup> *Police Reform Bill* House of Lords House of Commons Joint Committee on Human Rights Thirteenth Report of Session 2001-02 HL paper 86 HC 646 (March 2002)

<sup>199</sup> *ibid*: 5-6

<sup>200</sup> *ibid*: page 8

<sup>201</sup> *ibid*: page 9

*Rights Act 1998*; after all, this had been done for the *Regulation of Investigatory Powers Act 2000*.<sup>202</sup>

The JCHR also remarked that the Bill's redefinition of arrestable offences (**clause 42**) had significant implications for human rights, because those arrestable offences defined as serious and relating to (inter alia) serious harm to the security of the state or public order or to serious interference with the administration of justice or the investigation of crime, could trigger a range on powers impacting significantly on human rights.<sup>203</sup> The Committee questioned whether the powers envisaged in the Bill were proportionate, when considered against the sorts of offence for which the powers might be used.

The Committee also voiced concern that, in second reading, Lord Rooker had indicated that the Government would bring forward amendments seeking to extend the use of anti-social behaviour orders. The Committee argued that this approach would inhibit Parliamentary scrutiny:<sup>204</sup>

The Committee is very concerned that a Bill has been introduced knowing that the provisions giving rise to some of its more sensitive human rights issues will only be introduced by way of amendment, reducing the opportunity or proper scrutiny by Members of the House of Lords) and, perhaps, of the House of Commons), and by this Committee and others in both Houses.

The JCHR has therefore written to Lord Rooker seeking clarification of these and other questions which arose during its deliberations.

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<sup>202</sup> *Police Reform Bill* House of Lords House of Commons Joint Committee on Human Rights Thirteenth Report of Session 2001-02 HL paper 86 HC 646 (March 2002): page 11

<sup>203</sup> Such as the power to seek an order for access to or disclosure of confidential and journalistic material or to detain a suspect for more than 24 hours.

<sup>204</sup> *Police Reform Bill* House of Lords House of Commons Joint Committee on Human Rights Thirteenth Report of Session 2001-02 HL paper 86 HC 646 (March 2002): page 13