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The *Police Reform Bill* [HL]: Amendments in the House of Lords

Bill 127 of 2001 – 2002

The *Police Reform Bill* was introduced in the House of Lords on 24 January 2002, and received a Third Reading on 25 April 2002. The Bill is due to be debated on Second Reading in the Commons on 7 May 2002.

The Bill implements the Government's policy for police reform which is set out in the White Paper *Policing a New Century: a Blueprint for Reform.*

Another Library Research Paper, RP 02/15, provides a detailed analysis of the provisions of the Bill as introduced in the Lords. It explains the existing law, and the policy behind the Bill. RP 02/15 also summarises some reactions to the Bill.

This Research Paper is intended to update Research Paper RP 02/15 and should be read in conjunction with that paper. The principal amendments to Bill agreed in the House of Lords are examined. The Government's reaction to several high profile defeats are considered.

Madeleine Shaw

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Summary of main points

The *Police Reform Bill* [HL Bill 48 of 2001-2002] was introduced in the House of Lords on 24 January 2002, and received a Third Reading on 25 April 2002. The Bill was introduced in the Commons on 26 April 2002 [as Bill 127 of 2001-2002] and it is due to be debated on Second Reading on 7 May 2002.

The *Police Reform Bill* was introduced to implement the policy of 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. These include 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.

A detailed analysis of the provisions of the Bill as originally introduced in the House of Lords can be found in Library Research Paper RP 02/15. RP 02/15 explains the existing law and the policy behind the Bill. It also considers some reactions to the Bill.

This Research Paper is intended to update Research Paper RP 02/15 in the light of the various changes made to the original Bill, as it was amended during its passage through the Lords. Some of the more contentious amendments to the Bill, agreed in the House of Lords, are discussed. The Government's reactions to some high profile defeats are considered. This paper should be read in conjunction with RP 02/15.

Part I of this Research Paper examines the changes made to **Part 1** of the *Police Reform Bill*. **Clause 5** of the original Bill,[1] which would give the Home Secretary new powers to give directions to chief officers, has attracted the most controversy. This clause was debated extensively in Committee, and amendments were proposed by the Government. However, a majority of Peers voted against the Government to remove the original **Clause 5** from the Bill.

Parts II and III examine the changes made to **Parts 2** and **3** of the *Police Reform Bill* (concerning complaints and discipline).

Part IV examines the changes made to **Part 4** of the *Police Reform Bill*. **Part 4** of the Bill contains the controversial provisions relating to the increased role and powers of civilians employed by the police force. During the Bill's passage through the House of Lords, the

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[1] HL Bill 48

Government suffered four defeats in respect of its proposals for community support officers and accreditation schemes.

Part 5 of the Bill is concerned with Ministry of Defence Police. There have been no amendments to this part in the Lords, so **Part 5** of the Bill is not considered in this paper.

Part V of this paper sets out some of the miscellaneous amendments passed by the Lords relating to **Part 6** of the Bill.

Part IV considers the amendments to the different parts of the Bill relating to the Home Secretary's duty to consult before the exercise of his powers under the Bill.

Part VII outlines the updated report on the Bill from the Joint Committee on Human Rights.

Part VIII sets out the Government's response to the defeats which it faced in the Lords in respect of the Bill. The Government has indicated that it will seek to re-introduce the provisions which were dropped from the original Bill by the House of Lords.

Please note: The following table is intended to provide an easy reference to the different versions of the Bill.

HL Bill 48	Original Bill introduced in the House of Lords
HL Bill 64	As amended on Committee in the Lords
HL Bill 74	As amended on Report in the Lords
Bill Number 127	As amended on Third Reading in the Lords

For the sake of clarity, any reference in this Research Paper to the "original Bill," means HL Bill 48 which was first introduced in the Lords. Any reference to the "current Bill," means Bill 127 which is before the Commons for Second Reading.

CONTENTS

I Powers of the Secretary of State

A. Introduction

This part of the Research Paper examines the changes made to **Part 1** of the *Police Reform Bill*. **Part 1**, as originally presented in the House of Lords, is summarised. Then the amendments made in the House of Lords are considered. **Clause 5** of the original Bill,[2] which would give the Home Secretary new powers to give directions to chief officers, has attracted the most controversy. This clause was debated extensively in Committee, and amendments were proposed by the Government as a result. However, despite the Government amendments, a majority of peers voted against the Government to remove the original **Clause 5** from the Bill.

B. Summary of the Bill as originally presented in the House of Lords.

Part 1 of the original Bill would confer various powers on the Secretary of State.[3]

Clause 1 of the original Bill would impose a new duty on the Secretary of State (within the *Police Act 1996)* to prepare and lay before parliament a National Policing Plan annually. This plan would identify the Secretary of State's strategic policing priorities for England and Wales for three years, and would cover matters such as objectives, regulations, guidance and codes of practice.

Clause 2 of the original Bill 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. Such persons as the CPTDA saw fit would have to be consulted.

Clause 3 of the original Bill 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 to give directions to the police authority to take such measures as he decides. He would be empowered to do so when an inspection report commissioned under **Clause 3** had shown the force (or part of the force) to be inefficient or ineffective.

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2 HL Bill 48
3 HL Bill 48

Clause 5 of the original Bill[4] **[**removed from the Bill at Report Stage[5]] contained parallel powers for the Secretary of State 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 of the original Bill[6] [now **Clause 5**[7]**]** contains powers for the Secretary of State to make regulations on police equipment. Such regulations might specify the type of equipment to be used, for example. According to the Explanatory Notes, this could include vehicles, IT systems, batons, incapacitant sprays, headgear or protective clothing.[8]

Clause 7 of the original Bill[9] [now **Clause 6** as amended[10]] 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 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.

C. Amendments made by the House of Lords

1. National Policing Plan

a. Introduction

Clause 1 of the original Bill[11] would impose a new duty on the Secretary of State (within the *Police Act 1996)* to prepare and lay before Parliament a National Policing Plan annually. This plan 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. During the Bill's passage through the Lords, the House agreed some non-contentious amendments, including the timing of the publication of the plan, and the obligation to consult.

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4 HL Bill 48
5 Bill 127
6 HL Bill 48
7 Bill 127
8 *Police Reform Bill [HL Bill 48] Explanatory Notes* Home Office January 2002.
9 HL Bill 48
10 Bill 127
11 HL Bill 48

b. The Committee Stage debates

During the Committee Stage, several peers raised concerns in respect of the National Policing Plan. Essentially they thought that there should be an explicit requirement to consult with representatives of police authorities and chief constables before the preparation of the plan.[12] It was also argued that the plan should be published in sufficient time to enable police authorities to incorporate the measures into their own local plans and priorities.[13] It was argued that this would require the plan to be laid before Parliament six months before the start of the financial year to which the plan related. The Government Minister, Lord Rooker, stated that it would not be possible to publish the plan six months before the start of the financial year. However, at the Report Stage, the Government introduced several amendments to **Clause 1**, which the House of Lords agreed. These amendments sought to address the concerns over consultation and timing.

c. The Government's Amendments to Clause 1

The following Government amendments to **Clause 1** were agreed at the Report Stage.

Amendment 3 seeks to address concerns over the timing of the publication of the plan.[14] It amends **Clause 1** by adding extra sub-clauses to the new section 36A of the *Police Act 1996*, which would be introduced by **Clause 1**. The new sub-clauses are intended to ensure that any plan is laid before Parliament no later than 30 November in the financial year preceding the year to which the plan relates. The plan may be laid after 30 November in exceptional circumstances, but it *must* be laid before the beginning of the financial year to which it relates.

Amendment 8 inserts a requirement on the Secretary of State to consult before laying the National Policing Plan. It adds a clause to the new section 36A of the *Police Act 1996* which would be introduced by **Clause 1**. The Secretary of State would have a duty to consult with persons whom he considers to represent the interests of police authorities, chief officers, and such other persons as he sees fit.

Amendment 5 adds to the list of specified matters which the National Policing Plan must contain.[15] The amendment adds the requirement for the Secretary of State to describe the performance targets or indicators specified in relation to certain objectives contained in the plan.[16]

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12 HL Deb 28 February 2002 Col 1543

13 Ibid. Col 1555

14 HL Deb. 15 April 2002 Col 733

15 Ibid.

16 The Secretary of State may set such performance targets by a general direction section 38 of the *Police Act 1996*, and also by the specification of best value performance indicators under section 4 of the *Local Government Act 1999*.

Amendment 244 relates to objections which were raised at the Committee Stage. It was argued that the provision in the original Bill which would require police authorities to ensure their three year local policing plan[17] was consistent with the national policing plan was too onerous. Lord Rooker, on behalf of the Government, said that "on reflection, we agree that a duty to have regard to the national plan will be sufficient."[18]

2. Codes of Practice

Clause 2 of the original Bill[19] would amend the *Police Act 1996* by giving the Secretary of State the 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 (CPDTA). **Clause 2**, as originally introduced into the Lords, provided that the CPTDA would be required to consult with "such persons as it thinks fit." The Explanatory Notes to the Bill expanded on this:[20]

> 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.

At the Report Stage, the House of Lords passed a Government amendment to **Clause 2** which specifies on the face of the Bill that the CPTDA must consult persons whom it considers to represent the interests of police authorities, chief officers of police, as well as such other persons as it thinks fit.[21]

The House of Lords also passed a Government amendment which would require the Secretary of State to lay before Parliament any code of practice made under this section. However, the Secretary of State would not have to lay the code before Parliament, or might exclude parts of it, if publication would not be in interests of national security, could prejudice the prevention or detection of crime, or could jeopardise the safety of any person.[22]

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17 Under Clause 66 of the original HL Bill 48, now contained in Clause 77 of the current Bill 127
18 HL Deb 16 April 2002 Col 911
19 HL Bill 48
20 *Police Reform Bill [HL Bill 48] Explanatory Notes* Home Office January 2002
21 HL Deb 15 April 2002 Col 736
22 Ibid.

3. Powers to Require Inspection and Report

Clause 3 of the original Bill[23] has not been amended.

4. Direction to Police Authority

Clause 4 of the original Bill[24] would replace existing powers within the *Police Act 1996*, to enable the Secretary of State to give directions to the police authority to take such measures as he decides. He would have the power to do so only when an inspection report[25] had shown the force (or part of the force) to be inefficient or ineffective.

During the Committee Stage, concerns were raised about whether **Clause 4** as originally drafted[26] would give the Secretary of State wide powers to make directions to police authorities, irrespective of whether the measures related to the inspection report. Some peers were concerned that **Clause 4** gave the Home Secretary carte blanche to order the police authorities to follow any directions which he saw fit to make.[27]

In the light of these concerns, the Government introduced a number of amendments to define more precisely what type of measures the Secretary of State might direct police authorities to take, to address the inefficiency or ineffectiveness.[28] These were agreed by the House of Lords. Principally, the Government amendments provided that any directions could only be concerned with remedying the problems which had been identified by the inspection report, or matters related to the opinions expressed in the report. Lord Rooker stated that **Clause 4** was not intended to enable the Secretary of State to issue general directions to police authorities:[29]

> I make it absolutely clear that it is our intention that directions will be used to correct under-performance and that this is not about the Home Secretary micro-managing individual police forces on a day-to-day basis. Such directions are intended to remedy a problem. That is the key point to make. In addition, because we are committed to the use of these powers being open and transparent, we propose that the Home Secretary should report his use of the direction-making powers to Parliament.

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23 HL Bill 48
24 HL Bill 48
25 Under Clause 3
26 See HL Bill 48
27 HL Deb 28 February 2002 Col 1616
28 HL Deb 15 April 2002 Col 749-750
29 Ibid.

5. Directions to Chief Officers

a. Introduction

Clause 5 of the original Bill[30] [removed from the Bill at Report Stage[31]] would provide the Secretary of State with powers to direct chief officers to take remedial measures where he was satisfied that the force was not efficient or effective. It has been one of the more controversial clauses of the Bill, because of the perception of some that it would strengthen central control and give the Secretary of State too much power. The Government has maintained that this power is necessary as a matter of last resort to enable the Secretary of State to intervene on behalf of the community.[32]

The original **Clause 5** was the subject of extensive debate in Committee, although it was agreed to without amendments at this stage.[33] At the Report Stage, some Government amendments to **Clause 5** designed to assuage some of the concerns raised during the Committee Stage debate were agreed.[34] Notably, the Government tabled Amendment 42 which sought to introduce a procedure which had to be followed before the Secretary of State could exercise his powers under **Clause 5**. However, Amendment 42 was never moved. Another amendment tabled by Conservative and Liberal Democrat peers proposed that **Clause 5** should be removed from the Bill. Upon a division, the peers voted against the Government to remove **Clause 5** of the original Bill entirely.

For the avoidance of doubt, any reference to **Clause 5** in the following discussion refers to **Clause 5** (directions to chief officers) contained in the original Bill up to Report Stage.[35] It does not refer to the **Clause 5** (regulation of equipment) under the current Bill which is before the Commons.[36]

b. The Committee Stage debates

During the Committee Stage debates on proposed amendments to the original **Clause 5**, Lord Carlisle summed up the concerns about the clause in the following way:[37]

> The noble Lord [Lord Bassam] certainly gave the impression that [the] purposes [of Clause 5] are limited merely to what would probably be acceptable to both sides of the House. However, it appears to me that the difficulty arises in that,

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30 HL Bill 48

31 Bill 127

32 Further discussion on arguments for and against the increase in the Secretary of State's powers can be found in the Library Research Paper RP 02-15 under section **VII A.** The paper is available from the Parliamentary web-site and intranet.

33 HL Deb 5 March 2002 Col 158

34 HL Deb 15 April 2002 Col 743

35 HL Bill 48 (the original Bill) and HL Bill 64 (As amended in Committee)

36 Bill 127

37 HL Deb 5 March 2002 Col 157

> whereas that may be the Minister's intention, the wording of the clause is extremely wide and gives unnecessary powers to the Home Secretary, such that it affects the tripartite arrangement for the management of the police force in this country.

He went on to say that there was no difference between the powers granted under **Clause 5**, and "moving by stealth… unnoticeably and slowly towards a national police force."

Lord Renton put forward the view that **Clause 5** would be unnecessary:

> If things were going wrong, Clause 4, which will give power to the Secretary of State to give directions to the police authority, is what is needed. As the noble Lord, Lord Bradshaw, pointed out, it is absurd to separate the responsibilities of the police authority from the chief police officer. Instead of maintaining order and preventing and fighting crime, chief officers would, under Clause 5, become involved in a mass of bureaucratic and detailed directions, which would come from Home Office officials and which would lead to arguments with them.

Lord Condon, the former Metropolitan Police Commissioner, observed:[38]

> As drafted, the clause could be used in ways that were not in the public interest, which could damage the tripartite arrangements and, indeed, which would allow personality clashes to be played out through the Bill's provisions, whether such clashes arose because of an unreasonable Home Secretary, an unreasonable authority chairman, or an unreasonable commissioner or chief constable.

In response, the Home Office Minister, Lord Rooker, indicated that the Government would seek to amend the clause because he accepted that otherwise, **Clause 5** would be rejected outright.[39] He went on to defend the clause. He pointed out that the operation of the clause would be subject to an agreed protocol between the Home Secretary, the Association of Chief Police Officers and the Association of Police Authorities. Lord Rooker then addressed the various concerns which had been raised about the use to which the power could be put. For example Lord Elton had suggested earlier, that the Secretary of State could use **Clause 5** to require a certain number of the Community Support Officers to be employed by a force, in order to save money.[40] Lord Rooker stated that the Home Secretary would have no intention of using the power in the ways suggested. He went on to say:

> The Home Secretary will not, in the words of one noble Lord, "dive in". He will not, in the words of another noble Lord, send in "hit squads". Those allegations are without any foundation whatever.

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38 Ibid. Col 160

39 Ibid. Col 162

40 See HL Deb 5 March 2002 Col 131 et seq. for the concerns raised by peers about how the power could be used.

He also indicated that the clause would be amended to reflect that it was intended to be used as a last resort.

Further Lord Rooker said that it was inconceivable that the Home Secretary would operate on the powers without advice, for example, from Her Majesty's Inspectorate of Constabulary, the Police Standards Unit and the Audit Commission:

> The Home Secretary will not operate in an unreasonable fashion. Ministers are not allowed to do that; we are subject to legal process.

Lord Rooker concluded by saying:

> I understand the particular concerns about this clause. It probably requires more clarity and precision in the trigger mechanism which is used before such a clause would operate.

c. The Government's amendments to Clause 5

In response to the concerns raised about **Clause 5** of the original Bill at the Committee Stage, the Government sought to amend it at the Report Stage by tabling several amendments. When introducing the amendments for the Government, Lord Rooker said that the Government had "taken on board" the points made in Committee and had tried to find an acceptable solution indicating exactly what the Government intended to achieve by **Clause 5**.[41] Lord Rooker explained that the amendments would constitute a "robust and effective system to ensure that the powers of direction [could] not be used lightly:"

> The proposals will not allow any Home Secretary to operate on a whim or a hunch. We have said that that cannot happen and that we do not want it to happen, but we have repeatedly been told that perhaps not all future Home Secretaries will be as nice and benign as the present Home Secretary. We are locking in that process. The powers of direction cannot be used lightly. We have given assurances time and again that they will not be used lightly and that provision is now being put on the face of the Bill. These are powers to be used in the last resort when all other mechanisms have failed—and are clearly seen to have failed—to deliver at local level. That is why we have no problem in transparently operating the powers by a clearly set out process that gives the police authority or the chief officer every opportunity to correct the under-performance at issue.

Importantly, Amendment 39 was agreed by the House of Lords. This inserted a new sub-clause into **Clause 5**. Under the amended clause, if the Secretary of State exercises his power to give a direction under **Clause 5** in relation to a police force, he would have to prepare a report on the exercise of his power, and lay it before Parliament. The Report

would be prepared at a time considered appropriate by the Secretary of State, and could relate to more than one exercise of the power.[42] Lord Rooker explained the rationale behind this amendment:

> We are … happy to be held to account for those powers. That is why I propose that the Home Secretary—or Scottish Ministers, where they have the power to direct in relation to the National Criminal Intelligence Service—should be required to report the use of those powers to Parliament. I accept that that is important. My colleagues in government agreed in discussion that being accountable to Parliament means more than just answering Questions or being subject to written Questions and Statements. There must be a requirement to report on the use of the powers to Parliament. We intend to produce the reports as early as is practical after exercising the powers of direction, if those powers are used.

However Lord Dixon-Smith criticised the time allowed for the report by saying that a time "considered appropriate" by the Secretary of State was:[43]

> …an open ended time limit. Indeed it is not a time limit at all.

The Government also tabled further amendments to **Clause 5** to allay the concerns which had been expressed by the peers at the Committee Stage. The key amendment was Amendment 42, which sought to introduce a new section 41B into the *Police Act 1996*. This new section was intended to require a specific procedure to be followed before the power to give directions under **Clause 5** could be used. Lord Rooker reiterated that it had always been the Government's intention to introduce a protocol to set out the procedure to be followed before the power under **Clause 5** could be exercised. He explained that Amendment 42 would put the procedure on the face of the Bill, in an attempt to alleviate the Lords' concerns that the protocol would be too vulnerable to change in the future.

The procedure set out in Amendment 42 would mean that the following steps would have to be taken before the Secretary of State could give a direction under **Clause 5**. The police authority and the chief officer for the force in question would have to be given such information about the proposals, as was considered appropriate by the Secretary of State to enable the authority and the chief officer to make representations on the proposals. The police authority and the chief officer would have to have the opportunity to make representations on the proposals. A chief officer would have to have the opportunity for proposing what remedial measures might be taken, so that a direction under **Clause 5** would be unnecessary. The Secretary of State would be obliged to consider the representations. The new section would enable the Secretary of State to make regulations on the procedure to be followed. Any such regulations could only be made after consultation with persons who represent the police authorities, the chief

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41 HL Deb 15 April 2002 Col 743
42 HL Deb. 15 April 2002 Col 750
43 Ibid. Col 743

officers of police, and other persons as the Secretary of State thinks fit. Future regulations would be subject to the affirmative approval by each House.

However, Amendment 42 was not moved after the Lords voted to remove **Clause 5** entirely. The debate on Amendment 42 is discussed in greater detail in the following section of this Research Paper.

d. The Removal of Clause 5

Despite the Government's amendments and proposed amendments at the Report Stage, the Opposition Spokesperson for Home Affairs, Lord Dixon-Smith, introduced Amendment 41 (also at the Report Stage) with a view to removing **Clause 5** of the original Bill entirely.[44]

In introducing the amendment, Lord Dixon-Smith argued that "**Clause 5** takes the central administration of essentially local services too far:"[45]

He referred to a recent report by the London School of Economics and the South Bank University about crime and disorder in London. Lord Dixon-Smith then quoted the following extract from the report:

> Narrow, centrally imposed priorities are creating a gap between what Londoners expect of the police and what they get. Unless the Metropolitan Police can be more responsive to the needs of local people, it will lose the community support it needs to tackle crime effectively.

Lord Dixon-Smith went on to set out the Opposition's reasons for tabling the amendment:

> We believe that Clause 5 is wrong. There are jobs which central government can and should do, and there are jobs that they should not do. There is nothing that can be done from an office in Whitehall which will affect things dramatically on the streets, be it in London, Birmingham or even my local town of Braintree. Everywhere the circumstances are different.

He accepted that the Minister had done his best to ensure that actions taken under C**lause 5** would only be a matter of last resort, having given local bodies the incentive to put matters right in the first place. However he went on to say that, in the Opposition's view, **Clause 5** would take central administration to the point where it would prevent the effective performance of these essential services. He concluded by saying:

> We have come to the conclusion that the only sensible way of preventing this excess of action, which is damaging, is to delete Clause 5.

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44 HL Deb 15 April 2002 Col 751

45 Ibid.

The Liberal Democrat Spokesperson for Home Affairs, Lord Dholakia, also spoke against **Clause 5**, saying that the clause was "unacceptable." He said that **Clause 5** would threaten the very basis of the tripartate system of checks and balances by placing too much power in the hands of the Home Secretary:[46]

> …we have to be careful because the tripartite system has been constructed to ensure that no one party has complete control over policing. It is a unique system and works very well. That is not to say that the tripartite relationships may not be slightly adjusted from time to time, and the previous Home Secretaries have rightly done so. We recognise that that may be so and will work constructively with the Government to achieve the changes that are needed.

Lord Dhokalia went on to say that **Clause 5** would diminish "local influence, local accountability and local control." He then criticised the diminished role which the chief officer and police authorities would have under the system:

> Clause 5 allows the Home Secretary effectively to control local operational policy, despite the fact that the word "operational" has been questioned again and again. It empowers the Home Secretary to direct exactly what the chief officer or BCU commander must do through specifying the contents of action plans, targets and time-scales. It provides for the chief officer to report directly to the Home Secretary and it gives the local police authority, whose job it is to monitor and manage police performances, little say in the process. The police authority will only have to be consulted on the action plan, not agree it, and thus will have little say over the targets, time-scales or resources to be applied to the problem which the Home Secretary has decided needs to be solved. The authority will be copied into progress reports, but will have no effective role in managing performance.

Lord Borrie spoke against the proposed amendment to remove **Clause 5** entirely. He observed that the Government had tabled Amendment 42 to address concerns that **Clause 5** would interfere with the tripartate relationship. As a result there was now no justification for removing the clause entirely on this basis. Amendment 42, as discussed above, would have introduced a procedure to be followed by the Secretary of State before the **Clause 5** power was exercised.[47] Lord Borrie said:[48]

> [Amendment 42] is an example of the working out of the tripartite system and it is not in any way an attack on it. It involves giving every opportunity there could possibly be to the police authority in the first place and to the chief officer of police in the second, to make representations and proposals and to have them

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[46] The "tripartate relationship" refers to the division of power over the operation and management of the police force between the Home Secretary, the Police Authorities and the Chief Constables. The different, but interconnected, responsibilities are explained in Section **I** in Library Research Paper 02/15 which is available from the Parliamentary web-site and intranet.

[47] See previous section of this Research Paper on Government amendments to Clause 5.

[48] HL Deb 15 April 2002 Col 754

> considered by the Home Secretary. In the light of that amendment, if it is accepted, there is no way in which anybody could seriously argue that it was a great attack on the tripartite system or the arrival of centralised power in the sole hands of the Home Secretary. If Amendment No. 42 is accepted, and it is a form of centralisation, it is an incredibly modest one, which hardly deserves the attack that has been maintained from the Committee stage to this Report stage when we have this important other amendment in front of us.

Lord Elton said, in response to Lord Borrie, that the chief constable should not merely have right to be consulted, but should have an active voice and role in the matter.

Baroness Harris of Richmond voiced her "fundamental objections" to the Bill, based on her past experience as chair of a local police authority. She stated:

> We are told that the powers in Clause 5 are the last resort and that they are needed to drive up poor performance to the level of the best. As far as I can see, the Government have given us no hard evidence to show why such powers are necessary or in which circumstances they will be used. We have already discussed the extensive powers available under Clause 4. Can the Minister give a concrete example of why the powers under Clause 5 are needed and how they will be used?
>
> While the Minister considers that, I shall turn to the recent street crime initiative. The Government are concerned about rising levels of street crime as I am sure are all noble Lords. The Prime Minister has instigated weekly crime summits involving key players from the Association of Police Authorities, the Association of Chief Police Officers, the Criminal Prosecution Service, the courts and other government departments such as the Department of Health and the Department for Education and Skills. The 10 forces identified as having the worst problems in this area are already developing action plans to tackle the situation. That is being undertaken at the moment without the powers proposed under Clause 5. I leave the Minister and your Lordships with a question: why on earth do we need Clause 5?

However, Lord Corbett of Castle Vale spoke in favour of **Clause 5**, saying that the power was simply to remedy failure, and could not be used irrationally:

> A Home Secretary cannot get out of bed one morning and say, "I do not like what is going on in the West Midlands or in the Kent Police force or whatever", and pick on them for no reason. There has to be an identified failure in a police force and either an unwillingness or an inability by the local police authority to try to put right that failure.

The Home Office Minister, Lord Rooker spoke in defence of **Clause 5**. He said that **Clause 5** could not be considered in isolation following the proposed Government Amendment 42. He said that the amended **Clause 5** would operate as a last resort where there had been a failure and a breakdown of policing in a local area or force. He argued

that under Amendment 42, the chief officer and the police authority would already have had several opportunities to correct the failure:[49]

> Under the procedures in the government amendment, the chief of police and the beloved police authority will have already had one, two, three or four opportunities to put right the failure. What do noble Lords seek today? They seek to let them carry on, to have a fifth chance to fail their communities. That is the reality of removing Clause 5 and ignoring the amendments brought forward by the Government since Committee stage. Noble Lords shake their heads but that is what they seek: a fifth chance of failure, letting down local communities. That is the reality that we face, with noble Lords refusing to accept any alternative but to leave out Clause 5. Without Clause 5 the remaining provisions will go.
>
> The measure will be activated only after the police authority's own action plan to remedy the publicly acknowledged failure. So there is a publicly acknowledged failure of policing in either an area or a function of a police force. The police authority will then have another opportunity to come forward with its own action plan before Clause 5 is activated. The chief officer will come forward to the police authority with his own extra action plan to deal with that failure before Clause 5 operates.
>
> […]
>
> I am told that the Home Secretary can [make an] order [under Clause 5] …only after the failure of the local action plans put forward by the police authority and the chief constable without the Home Secretary interfering. So what do noble Lords want? Is it the status quo? That cannot be acceptable.

In reply, Lord Dixon-Smith doubted the ability of the Government's Amendment 42 to address the concerns raised over **Clause 5**. He said that Amendment 42 was silent on whether there might be time for the proposals of the authority and the chief officer to be implemented, or whether they have failed. He said:

> The Minister is gently stretching the amendment, although I accept its good intention. We have to deal with the words before us in the Bill.

On a division, the Lords voted against the Government, agreeing to Amendment 41 by 205 to 131. This removed **Clause 5** from the Bill.[50]

The Government defeat was welcomed by the shadow Home Secretary, Oliver Letwin, who is reported as having led the opposition to the reforms.[51] Mr Letwin said that peers

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[49] HL Deb 15 April 2002 Col 760

[50] NB: Similar powers of the Secretary of State to direct the director generals of the national Crime Squad and the National Criminal Intelligence Service were also removed. HL Deb 25 April 2002 Col 403

[51] "Lords blow for Labour plans to reform police," George Jones, *The Daily Telegraph* Page 8.

were right to be concerned about the Bill's provisions. He claimed that they would give the Home Secretary of the day the power if he wanted to, to "micro-manage" the operations of the constabularies of England and Wales:[52]

> As a matter of principle, politicians should not run police forces. It is one of the cornerstones of our rule of law that the police are free from political interference and not beholden to the whims and demands of the Government of the day. The Bill threatens to undermine that principle.

In a Home Office press release, the Government has stated its intention to reintroduce the clause in the Commons.[53] The Home Office Minister John Denham said that the reintroduction of the clause would ensure the Home Secretary had the power to intervene on behalf of communities where policing was failing.

6. Regulation of Equipment

Clause 6 of the original Bill[54] [now **Clause 5**[55]] contains powers for the Secretary of State to make regulations on police equipment. These regulations could, for example, specify the equipment to be used. The Lords agreed Government amendments to this clause to specify that the Secretary of State must consult with persons who he considers to represent the police authorities and the chief constables, as well as other persons who he thinks fit.[56]

7. Regulation of Procedure and Practices

Clause 7 of the original Bill[57] [now **Clause 6**[58]] 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 regulations, requiring all police forces in England and Wales to follow particular operational procedures. He would be required to take advice from the Central Police Training and Development Authority (CPTDA), who in turn might consult whomever they thought fit.

The House of Lords agreed a Government amendment to **Clause 7** during the second day of the Committee Stage. This would implement the recommendation made in the report by the Select Committee on Delegated Powers and Regulatory Reform.[59] The amendment

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52 Ibid.
53 See **Part VIII** of this Research Paper for further discussion. PN Reference 108/2002 25 April 2002. Available from: http://213.219.10.30/n_story.asp?item_id=45
54 HL Bill 48
55 Bill 127
56 HL Deb 15 April 2002 Col 784
57 HL Bill 48
58 Bill 127
59 HL Deb 5 March 2002 Col 172

would mean that the *first* regulations to be passed under **Clause 7** must be approved by a resolution of each House. Thereafter, any regulations made would be subject to the negative procedure. The Committee had recommended that the first regulations be subject to the affirmative procedure in view of the potential width of the regulation making power.

During the Committee Stage, concern was expressed that **Clause 7** went "too far."[60] Lord Dixon-Smith stated:

> We accept that the Government wish to drive for greater efficiency and effectiveness in the police service. However, the clause goes too far because it may stultify and freeze off development.
>
> Although it is a sine qua non of good policing that operational practices and procedures should be compatible between forces, the idea that there should be one centrally directed way of doing things does not appeal to me. It appeals even less when one considers that there might be a change of Secretary of State and we would have somebody who would like things done differently.
>
> On this side of the House we are in danger of becoming boring on the subject, but the development of operational practice will happen out in the field. It will be evolved in the light of hard experience gained by policemen dealing with criminals and community problems. It is unbelievable that a Secretary of State could regulate that process. I have no difficulty with the idea that the inspectorate, the CPTDA, the Audit Commission and all the other bodies should work with the Government to see that details of best practice are distributed around those who are not doing so well and that people should be guided in the best way of doing things. Nobody has any problem with that, but we do not require a power of regulation for procedures and practices in order to achieve it

In response, Lord Rooker stated that there were some fundamental misunderstandings underlying the arguments put forward for removing **Clause 7**:[61]

> By their nature, the regulations will be concerned with the generality of cases—for example, how to collect and record criminal intelligence or how to investigate homicides or other serious crimes. Regulations cannot relate to particular cases, so again—as elsewhere in the provisions—there is no threat to the operational independence of the chief officer.

At the Report Stage, the House of Lords agreed a Government amendment to **Clause 7**. Lord Bassam, on behalf of the Government, acknowledged that the original wording of **Clause 7** went wider in its effect than was intended by the Government.[62]

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60 HL Deb 5 March 2002 Col 172
61 Ibid. Col 176
62 HL Deb 15 April 2002 Col 785

Lord Bassam explained what the Government intended the clause to achieve:

> Where it would be in the national interest for all police forces to adopt common procedures or practices—but only then—the Home Secretary would lay a regulation before Parliament. By that, we mean where forces need to be able to work closely with one another—where they need to share resources or be able to work in the same way, or where they need to be able, effectively and efficiently, to share information. We have offered the example of the national intelligence model as a means of ensuring that all forces are gathering and handling intelligence material in the same way.
>
> Sadly, criminals do not operate within force boundaries; it would be much easier for us if they did. Forces therefore need to be able quickly and effectively to share robust information on criminals, their modus operandi and their whereabouts. A number of other examples powerfully make the case for this regulation-making power. There may be occasions when adjacent forces need to respond to the same terrorist or firearms incident; an armed robbery, for example, may give rise to a pursuit across force boundaries. It is essential in such circumstances that the officers responding to incidents have received similar training and are deploying similar tactics. There could be a very real risk to the safety of the officers and to members of the public if different approaches to such situations gave rise to any confusion

The Government amendments sought to clarify and narrow the ambit of the regulation-making power to reflect the intended purpose of the provision. Thus they removed the reference in **Clause 7** to "operational" procedures and practices. This was intended to clarify that future regulations made under the clause were designed to enable common procedures to be introduced, but not common operational procedures so as to compromise the operational independence of chief officers. The Government amendments also sought to "introduce a number of further safeguards to ensure that the views of the service are taken into account."

Lord Bassam explained the amendments in the following terms:

> First, we have introduced a requirement for the Home Secretary to consult police authorities and chief officers at an early stage to seek their views on whether regulations are needed in any given case.
>
> Secondly, we have spelt out much more clearly what the test will be for regulations under this clause. Regulations may be made only where it is necessary, in the national interest, for the service to adopt common procedures or practices in order to facilitate the carrying out by members of any two or more police forces of joint or co-ordinated operations.
>
> Thirdly, the Central Police Training and Development Authority, in preparing advice for the drawing up of any regulation under this section, is explicitly required to consult police authorities and chief officers.

> Fourthly, and perhaps most significantly, the Home Secretary is required to consider not only the advice of the Central Police Training and Development Authority but must also have advice from Her Majesty's Chief Inspector of Constabulary that states that he is satisfied that the making of a regulation is necessary to meet the test I have just set out.
>
> These changes not only bring chief officers and police authorities in at every stage and every level, but also introduce Her Majesty's Chief Inspector of Constabulary as an independent assessor of whether given regulations are necessary. The amendments to Schedule 1 introduce like provisions in the case of regulations relating to the National Crime Squad. These Government amendments make significant changes to Clause 7. I should hope that, in the spirit of some of the earlier debates, noble Lords will recognise that and fully endorse the proposed changes

II Complaints and Misconduct

A. Introduction

This part of the Research Paper examines the changes made to **Part 2** of the *Police Reform Bill*. **Part 2**, as originally presented in the House of Lords, is summarised. Then the amendments made in the House of Lords are considered. A number of relatively minor Government amendments to **Part 2** were agreed by the House of Lords.

B. Summary of the Bill as originally introduced in the House of Lords

Clause 9 of the original Bill[63] [now **Clause 8**[64]] 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 the original **Clause 10**[65] [now **Clause 9**[66]]. These centre on:

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63 HL Bill 48
64 Bill 127
65 HL Bill 48
66 Bill 127

- 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'.[67] The detailed arrangements are set out in **Schedule 2**.

Clause 11[68] [now **Clause 10**[69]] 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 further reports, drawing the Secretary of State's attention to other matters which have come to the Commission's notice. This might be, for example, because of their gravity or other exceptional circumstances **(Clause 11(3)).** **Sub-clause 10** sets out those individuals and bodies to whom the IPCC must send its reports.

Clause 14[70] [now **Clause 13**[71]] provides that complaints over the direction and control of the police force by its chief officer or acting chief officer are excluded from the remit of the IPCC. The Secretary of State may publish guidance to chief officers in relation to this.

Clause 15[72] [now **Clause 14**[73]] 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.

Where one force lends assistance to another under **Clause 15** powers, **Clause 16**[74] [now **Clause 15**[75]] provides for payment to be made. **Clause 17**[76] [now **Clause 16**[77]] would require police authorities and chief officers to make information available to the IPCC. Similarly, **Clause 18**[78] [now **Clause 17**[79]] would require chief officers and police authorities to give the IPCC access to their premises and documents.

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67 *Police Reform Bill [HL Bill 48] Explanatory Notes* Home Office January 2002
68 HL Bill 48
69 Bill 127
70 HL Bill 48
71 Bill 127
72 HL Bill 48
73 Bill 127
74 HL Bill 48
75 Bill 127
76 HL Bill 48
77 Bill 127
78 HL Bill 48
79 Bill 127

Clause 19[80] [now **Clause 18**[81]] 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. To foster greater openness, the IPCC would be under a duty to keep complainants informed during and after an investigation **(Clause 20**[82] [now **Clause 19**[83]]).

C. Amendments made by the House of Lords.

a. Guidance on handling complaints

The original Bill provided for the Secretary of State to issue guidance to chief officers about the handling of complaints about the direction and control of a force.[84] The House agreed a Government amendment to enable the Secretary of State to issue the same guidance to police authorities, and to place the same duty on them to have regard to it.[85]

b. Duty to introduce a system of complaints for IPCC staff

The original Bill would have enabled the Home Secretary to make provision for a system to deal with complaints against the staff of the IPCC, at his discretion.[86]

The House of Lords agreed to an amendment tabled by the Conservative Peer, Viscount Bridgeman, to oblige the Home Secretary to set up such a system.[87] The Government accepted this amendment.

c. Prohibition for accredited persons to sit on the IPCC

The House of Lords agreed a Government amendment which would prevent persons accredited under the new community safety accreditation schemes from becoming a member of the IPCC. This would be to prevent any public perception that the IPCC was lacking in independence and objectivity.[88]

d. Duty on the IPCC to consult

The House approved a Government amendment which would oblige the IPCC to consult with representatives of the police authorities and chief officers before issuing any

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80 HL Bill 48
81 Bill 127
82 HL Bill 48
83 Bill 127
84 Clause 14 of the original HL Bill 48, now Clause 13 of the current Bill 127
85 HL Deb 5 March 2002 Col 231, now contained in Clause 13 of the current Bill 127
86 Clause 25 of the original HL Bill 48, now contained in Clause 25 of the current Bill 127
87 HL Deb 5 March 2002 Col 243
88 HL Deb 15 April 2002 Col 792. Now contained in Clause 8 of the current Bill 127

guidance.[89] A further amendment placed the Secretary of State under a similar duty to consult before making regulations in relation to the complaints system.[90]

III Removal, suspension and disciplining of police officers

A. Introduction

This part of the Research Paper examines the changes made to **Part 3** of the *Police Reform Bill*. **Part 3**, as originally presented in the House of Lords, is summarised and the amendments made in the House of Lords are considered. Various Government amendments were passed by the House of Lords in respect of the proposed system for disciplining police officers for misconduct.

B. Summary of the Bill as originally introduced in the House of Lords

The *Police Act 1996* provides that senior police officers may be called upon to retire in the interests of efficiency and effectiveness. **Clause 28**[91] would add resignation to these powers. **Clause 29**[92] 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:[93]

> 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[94] would confer on the Secretary of State the power to require the Metropolitan Police Authority or other police authorities to require the resignation or retirement of, or to suspend the Commissioner, Deputy Commissioner or Chief Constable. The clause requires the Secretary of State to give notice to the officer concerned, and to allow that officer to make representations. It also streamlines the process for considering cases

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89 HL Deb 15 April 2002 Col 805. The power to issue guidance was contained in Clause 21 of the original HL Bill 48, now to be found in Clause 20 of the current Bill 127.

90 The power to make such regulations was contained in Clause 22 of the original HL Bill 48, and is now contained in Clause 21 and 22 of the current Bill 127.

91 HL Bill 48, remains Clause 28 in Bill 127

92 HL Bill 48, now Clause 30 in Bill 127

93 *Police Reform Bill [HL Bill 48] Explanatory Notes* Home Office January 2002

94 HL Bill 48, now Clause 31 in Bill 127

brought under these powers.[95] The Secretary of State would have a discretionary power to make regulations (**Clause 31**[96]).

The original **Clause 32**[97] [now **Clause 34**[98]] governs the conduct of disciplinary proceedings. In short:[99]

> **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.

C. Amendments made by the House of Lords

a. Special Constables and Civilians

Under current law, there are no regulations concerned with the misconduct of special constables. Neither is there a code of practice. It is up to the chief officer to decide how disciplinary matters are dealt with.

The House of Lords agreed a Government amendment which would enable the Secretary of State to make regulations under Section 51 of the *Police Act 1996* as to the conduct of special constables.[100]

Furthermore, under the Bill the IPCC would have the power to recommend or direct that disciplinary proceedings be brought against a "member of a police force" who was the subject of complaint.[101] The House of Lords approved an amendment which would extend that power to both special constables and civilians serving with the police under **Part 4** of the Bill.[102]

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95 *Police Reform Bill Explanatory Notes* Bill 48-EN
96 HL Bill 48, now Clause 32 in Bill 127
97 HL Bill 48
98 Bill 127
99 *Police Reform Bill Explanatory Notes* HL Bill 48-EN
100 HL Deb 12 March 2002 Col 742. Now contained in Clause 33 of the current Bill 127
101 Paragraph 27, Schedule 3 of the original HL Bill 48; Clause numbering remains the same in the current Bill 127
102 HL Deb 15 April 2002 Col 801

b. Introduction of procedural requirements for the removal of senior police officers

The House of Lords approved a Government amendment which laid down a specific procedure to be followed before the removal of a senior police officer.[103]

Lord Rooker introduced the new procedure as follows:

> The Government share the wish that an officer who is subject to proceedings should have a full and fair opportunity to present his or her case. The government amendments will have that effect.
>
> […]
>
> The new clause inserted by Amendment No. 123 will require three distinct courses of action: first, the officer would have to be given an explanation, in writing, of the police authority's grounds for calling on him or her to retire or resign; secondly, the officer would have the right to make representations, in writing, in person or through someone acting on his or her behalf; thirdly, the police authority would be under a statutory duty to consider those representations.
>
> Correspondingly, in cases in which the Secretary of State intervenes under Section 42, Amendment No. 125 provides for the officer to be given notice of the Home Secretary's intention to intervene and a written explanation of his reasons for doing so. Amendment No. 128 provides for the right to be heard by the inquiry and for the officer to be heard in person. That amendment also provides a statutory right for the police authority to make representations to the inquiry if it wishes.

The Liberal Democrat Whip, Baroness Harris of Richmond welcomed the amendments but observed that there should be an earlier dialogue between the Home Secretary and the police authority, before the Home Secretary told the police authority to remove the chief officer:[104]

> We made it clear at Second Reading that we have considerable difficulty with the idea that the Home Secretary should have the power to require a police authority to suspend its chief officer. We are not persuaded that the Home Secretary should second-guess the judgement of the authority on whether local confidence in the force demands that the chief officer be suspended. That is a matter for the local community and its representatives; namely, the police authority. I see that the Minister accepts that argument.

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[103] HL Deb 15 April 2002 Col 805.
[104] Ibid Col 807

> If the Home Secretary insists on taking the power, we would be considerably reassured if, before exercising it in any given case, he were required by statute to consult the police authority concerned and consider its views. Currently, the Bill simply gives the authority the opportunity to make representations after the Home Secretary has reached a conclusion. The effect of our amendment would be quite simple. It would require the Secretary of State to consult and to have regard to representations received. That should be enshrined in the Bill.

Lord Rooker responded that he would be happy to consider the points made, but that the best way to prescribe early consultation would be through regulations made under this part of the Bill.[105]

IV Police Powers

A. Introduction

This part of the Research Paper examines the changes made to **Part 4** of the *Police Reform Bill*. **Part 4**, as originally presented in the House of Lords, is summarised and the amendments made in the House of Lords are considered.

Part 4 of the Bill contains provisions relating to the increased role and powers of civilians within the police force. Part 4 would modify and supplement existing police powers. Two aspects of this have generated substantial controversy. The first relates to the creation of civilian "community support officers" who would be given some of the powers currently enjoyed by the police. The second related to the creation of community safety accreditation schemes. Such schemes would make greater use of existing organisations that are already involved in community safety schemes to carry out some policing functions. These existing organisations might include, for example, neighbourhood wardens, sports stewards or security firms. The principal accusation levelled at these provisions has been that they represent "policing on the cheap." However, the Government has maintained that greater use of civilians will free up police officers to spend more time on the street. Further discussion of the arguments for and against proposals to make greater use of civilians can be found in the Library Research Paper 02/15 which is available from the Parliamentary web-site and intranet.

This part of the Bill has also been subject to comment by the Joint Committee on Human Rights, as discussed below.

During the Bill's passage through the House of Lords, the Government suffered four defeats in respect of its proposals for community support officers and accreditation schemes.

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[105] Contained in Clause 31 of the original HL Bill 48, now contained in Clause 32 of the current Bill 127

B. Summary of the Bill as originally introduced in the House of Lords

Clause 33 of the original Bill[106] [now **Clause 35**[107]] 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 ("designated civilians"). The chief officer would have to be satisfied that the designated person was suitable for the task, capable of effectively carrying it out and had been adequately trained for it **(Clause 33(3)).** It has been the creation of community support officers (CSOs) which has been one of the most controversial provisions of the Bill.

The White Paper, *Policing A New Century: A Blueprint for Reform*, which preceded the Bill, explained the rationale for and role of CSOs.[108] CSOs would provide a supporting role to police officers by undertaking basic patrol functions. They would provide a visible presence in the community, and have the powers to deal with anti-social behaviour and minor disorder.

Schedule 4 of the Bill elaborates on the police powers exercisable by police civilians. **Part 1** defines the powers of community support officers:[109]

> **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[110] 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.

This part of the Bill would also enable the introduction of "community safety accreditation schemes" within the force area. Such schemes would make greater use of employees of existing organisations already involved in community safety to carry out some policing functions ("accredited civilians"). These accredited organisations might include, for example, such as neighbourhood wardens, sports stewards or security firms.

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[106] HL Bill 48
[107] Bill 127
[108] *Policing A New Century: A Blueprint for Reform* (Cm 5326) Home Office December 2001: page 11
[109] *Police Reform Bill [HL Bill 48] Explanatory Notes* Home Office January 2002
[110] For up to 30 minutes

Under powers in the original **Clause 34**[111]**,** [now **Clause 36**[112]] 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**[113] [now **Clause 37**[114]**],** 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 civilians (which are narrower than those exercised by community safety officers).

Under the Bill it would be an offence to assault a designated or accredited person or a person assisting them in the exercise of their duty. Various other offences, such as impersonating a designated or accredited person, would be created by the original Bill.

Chapter 2 of **Part 4** of the Bill modifies and extends existing police powers.[115]

C. The Joint Committee on Human Rights

In March 2002, the Joint Committee on Human Rights published its thirteenth report on the *Police Reform Bill*. It raised concerns about the compatibility of some aspects of the Bill with the European Convention on Human Rights (ECHR).[116] Their report is discussed in the Library Research Paper RP 02/15 on the *Police Reform Bill*.[117]

At the end of February 2002, the Joint Committee wrote to the Minister in charge of the Bill in the Lords, Lord Rooker. They raised a number of questions about the Bill's compliance with the ECHR. This letter is set out in an annex to their thirteenth report. The Joint Committee undertook to report further on the Bill once they had considered the Government's responses to the questions.

The Government response, in the form of a memorandum from the Home Office, was received on 13 March 2002. The Joint Committee then published its fifteenth report.[118]

In its thirteenth report, the Joint Committee examined the compatibility of **Part 4** of the Bill regarding the exercise of police powers by civilians.[119] They raised concerns that the

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111 HL Bill 48
112 Bill 127
113 HL Bill 48
114 Bill 127
115 For further discussion, please see the Library Research Paper 02/15 which is available from the Parliamentary web-site and intranet.
116 *Police Reform Bill* House of Lord House of Commons Joint Committee on Human Rights Thirteenth Report of Session 2001-02 HL paper 86 HC 646 (March 2002)
117 Page 90
118 *Police Reform Bill: Further Report* House of Lords House of Common Joint Committee on Human Rights Fifteenth Report of Session 2001-02 HL paper 98 HC 706 (March 2002)
119 Page 11

powers might raise issues concerning Article 2 of the ECHR on the right to life (for example, in connection with the power of officers to use force). They also thought that Article 3 (right to be free of degrading treatment), Article 5 (right not to be deprived of liberty), Article 6 (right to a fair hearing and the presumption of innocence), Article 8 (right to respect for family and private life), Article 14 (right to be free from discrimination in the enjoyment of a Convention right) and Article 1 of Protocol 1 (right to the enjoyment of one's possessions) could be engaged.

The Joint Committee was concerned as to whether civilians would be properly accountable and subject to sufficient legal and managerial controls.

In its fifteenth report, the Joint Committee noted the Government's view that designated civilian employees would be under the control of the chief officer and would be required to abide by the PACE codes of practice. In addition, the Government said, the police authority would be liable for any unlawful conduct. This would include liability for any breaches of the duty to act compatibly with Convention rights, contained in section 6 of the *Human Rights Act 1998*.[120]

The Joint Committee responded to the Government's view. They accepted that section 6 of the *Human Rights Act 1998* might be sufficient to secure the effective protection of human rights generally. However, the Joint Committee "considered it vital that effective and mandatory training should be provided for the new civilian officers on the limits of their discretion in the exercise of their powers under PACE." The Joint Committee recommended that the Government should place before the House, information about the nature and content of the training which such officers would be required to undergo.

The Joint Committee recommended additional safeguards in respect of community safety accreditation schemes. In their view, the Bill should be amended to make employers under such schemes "public authorities" so that they would be under a duty by the *Human Rights Act 1998* to have regard to the ECHR.[121]

The Joint Committee expressed concern that the power of the Secretary of State to amend **Schedules 4** and **5** of the Bill contained in **Clause 38** of the original Bill, might enable the infringement of human rights, without ensuring that there was a legitimate aim as specified in the Convention.[122] This aspect of the fifteenth report is considered in more detail below.[123]

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[120] Fifteenth Report Page 17
[121] Ibid. Page 18
[122] Page 18
[123] See **D:1** below

D. Amendments made by the House of Lords

1. Secretary of State's power to amend the police powers given to certain civilian officers

a. Introduction

Chapter 1 of **Part 4**, and **Schedules 4** and **5** of the Bill, would enable the exercise of police powers by certain civilians. The original Bill would have provided a power to enable the Home Secretary to amend and supplement the list of police powers which civilians might possess under the Bill. This power to amend was contained in **Clause 38** of the original Bill.[124]

Before discussing the substance of the amendments, it is worth setting out in detail the changes in numbering which have occurred.

By Third Reading, due to the addition of extra clauses to the Bill during its passage through the Lords, **Clause 38** had become **Clause 40**.[125] Then, as is clear from the following discussion, the power to amend civilian powers contained in **Clause 40** was removed from the Bill at Third Reading. This means that the current version of the Bill before the Commons has a new **Clause 40**.[126]

For the avoidance of doubt, any reference to **Clause 40** in the following discussion refers to the **Clause 40** (power of the Secretary of State to amend civilian powers) at Third Reading and not to the current **Clause 40** (Code of Practice relating to Chief Officers' Powers under Chapter 1) which is before the Commons.[127]

At Third Reading, **Clause 40** provided that the Secretary of State could, by order, modify the provisions of **Schedule 4**. This might be by amending or repealing any provision of that schedule, or by adding to the powers or duties specified in that schedule which might be used by a designated civilian person. Similarly, under **Clause 40**, the Home Secretary would have had the power to authorise additional powers and duties for accredited persons under **Schedule 5**.

Such an order might have added new powers and duties through the addition of an extra part to **Schedule 4**. It might also have added to the descriptions of civilian officers contained in **Clause 33** of the original Bill[128] [now **Clause 35**[129]]. As the Bill currently

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[124] HL Bill 48
[125] HL Bill 74
[126] Bill 127
[127] i.e. HL Bill 74, not Bill 127
[128] HL Bill 48
[129] Bill 127

stands, the descriptions of civilian officers who are included in Part 4, are community support officers, investigating officers, detention officers and escort officers.

However, **Clause 40(5)** then limited the powers that the Secretary of State could add under this clause. He could not add powers which would allow the designated civilians or accredited persons to have a power to arrest or to detain persons, beyond those which were already provided for in the Bill. No power to enter premises without the consent of the occupier could be added, except when the civilian or accredited person was in the company of an officer. Finally, no new power (i.e. one which was not already conferred on constables or other specified persons by an existing enactment) could be given to civilians or accredited persons. Any order under the original clause would be subject to affirmative resolution by both Houses.

In its fifteenth report, the Joint Committee on Human Rights expressed the view that **Clause 40** might conflict with the *Human Rights Act 1998* because any additional powers made under it would not necessarily be restricted to achieving a legitimate aim as required by the ECHR.[130] They sought clarification from the Government, who responded that the legitimate aim in each case would relate to the prevention of disorder, crime and anti-social behaviour. The Joint Committee pointed out that the prevention of anti-social behaviour by itself is not a legitimate aim within the Convention. They recommended that any legitimate aims to be achieved by the additional powers should be expressly included in the Bill.

Clause 40 was the subject of much debate, as some peers argued that it was unnecessary if the Bill was debated properly and passed by Parliament. It was argued, that the Home Secretary should not be given the power to amend **Part 4** in this way. Upon a vote at Third Reading, an amendment was tabled to remove **clause 40** from the Bill.

b. The Removal of Clause 40

At Third Reading, Lord Dixon-Smith moved Amendment 28 to remove **Clause 40** from the Bill. He put forward his main objection to **Clause 40** as follows:[131]

> Clause 40 goes too far. There are other problems with Schedules 4 and 5, to which we shall come later, although we need not concern ourselves with those now. However, we argue strongly that Parliament should decide such matters and that should be the end of it. We do not see the necessity for having Clause 40 in the first place. If such matters have been properly debated and determined by both Houses by the time that the Bill is passed, that ought to be the end of it.

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[130] *Police Reform Bill: Further Report* House of Lords House of Common Joint Committee on Human Rights Fifteenth Report of Session 2001-02 HL paper 98 HC 706 (March 2002)

[131] HL Deb 25 April 2002 Col 382

He observed that, although any amendments to the powers would be subject to affirmative resolution, **Clause 40** still called into question the validity of the original legislation. He said that this was despite the view of the Select Committee on Delegated Powers and Regulatory Reform to the contrary. Lord Dixon-Smith noted the additional problem was that Parliament gives less consideration to statutory instruments than to primary legislation.

Later, Lord Dixon-Smith added that **Clause 40** would be too flexible:[132]

> We have perennial problems with the possibility of what may happen. The brutal reality of government is that no government can commit their successor.

Lord Borrie then spoke in support of retaining **Clause 40** in the Bill. He acknowledged that there was legitimate anxiety about the powers of community support officers and other civilians. He argued that precisely because of the novelty of the provisions, it was important to allow for future amendments once the system had been implemented. He said that this would be a "wholly appropriate and desirable" power and to wait for many years for primary legislation would be "wholly undesirable."

Earl Russell spoke against **Clause 40**. He disagreed with Lord Borrie, and said that historically, such powers of arrest and entry were not an innovation:[133]

> They have been tried before and caused a vast amount of controversy. Inevitably, they led to conflicts of interest. They led to the revival of impeachment in the Parliament of 1621

He then went on to discuss how frequently secondary legislation was debated in Parliament. He said that in the previous Parliament, 0.5 per cent of negative instruments were debated in the Commons, and the percentage for affirmative instruments was "not much higher." He observed that none had been defeated in the Commons and only one had been in the Lords. He concluded by saying:

> If this House allows this clause to remain on the statute book, Parliament will have made itself redundant.

Lord Dholakia also set out his objections to **Clause 40**. He criticised the clause for giving the Home Secretary "wide ranging powers" which were, in his view, unnecessary:

> Even at present, the Home Secretary has wide powers. He can make regulations and issue codes of practice and good practice guidelines which police authorities follow. To empower the Secretary of State further, as envisaged in Clause 40, bypasses one of the fundamental principles of local policing. Section 96 of the

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[132] Ibid. Col 391
[133] Ibid. Col 385

> Police Act 1996 requires police authorities, not the Home Secretary, to make arrangements for local consultation. The purpose is to obtain people's consent as regards policing in their area and to obtain the co-operation of local people in preventing crime.
>
> The Secretary of State does not require the additional powers laid down in Clause 40. This is another measure which shows how far the Government are prepared to go to control some police functions centrally.

Lord Rooker, the Government Minister, addressed the criticisms of **Clause 40**. He observed that the amendment was contrary to the view of the Select Committee on Delegated Powers and Regulatory Reform, whose recommendation the Government had acceded to. He went on to say:

> Furthermore, any recognition whatever that this is enabling legislation has been absent from the debate. The clause is not prescriptive. There is reference to pilot schemes. Of course there will be pilots. There are 43 police authorities—and they will not all choose to operate the legislation. It is for the chief constables to decide whether to include such provision in their policing plans. It is not up to the Home Secretary. This is purely enabling legislation for chief constables. There is nothing prescriptive about it. So I cannot understand some of the arguments that have been made repeatedly at different stages.
>
> It is not as though Clause 40 contains no safeguards, or checks and balances, to prevent the provision from being used inappropriately. Any changes under the terms of the clause are subject to affirmative resolution—a fact dismissed by the noble Earl. I do not dismiss it, and I do not accept his dismissal.

Lord Rooker then went on to discuss the "checks and balances" which he said the clause contained:

> The clause explicitly prohibits the Secretary of State from conferring powers of arrest or detention on civilians which are additional to those already provided for in Schedules 4 and 5. So he cannot by stealth create an army of community support officers with full constabulary powers. He cannot confer on such officers additional powers to enter premises without the occupier's consent when unaccompanied by a constable; and he is prevented from creating new powers which are not already available to a constable or some other person—for example, a local authority employee such as a dog warden or an environmental health officer. He cannot do any of those things under the clause, by negative or affirmative resolution, with or without the approval of the House. He simply cannot do it. None of us claims to have a crystal ball. Schedules 4 and 5 provide a comprehensive list of powers—a menu from which chief constables can choose—which would enable those who are designated as community support officers to tackle the various types of behaviour that blight people's lives at the moment, in 2002. In the future the position might change. It may change or it might change, but we do not say that it "will" change.

On division, the Lords voted against the Government, agreeing Amendment 28 by 165 to 127. This removed **Clause 40** from the Bill altogether.

In a Home Office press release, the Government has indicated its intention to reintroduce the power in the Commons.[134]

2. Powers of civilians to detain

a. Introduction

Paragraph 2 of **Schedule 4** of the Bill as originally introduced would provide the power for Community Support Officers (CSOs) to detain.[135] Where a CSO had reason to believe that a specified offences had been committed, he could require that person to give his name and address. If the suspect refused to give his name, or was suspected of having given a false name, the CSO could require the suspected offender to wait for thirty minutes until a constable arrived, or the suspect accompanied the CSO to a police station. A person who refused to wait for a constable or to go to the police station would commit an offence.

Paragraph 4 of **Schedule 4** of the original Bill[136] [now **paragraph 3** of **Schedule 4**[137]] would enable a CSO to be given the power to use reasonable force in order to detain.

Paragraph 2 of **schedule 5** of the original Bill would provide accredited civilians working under a community safety scheme with identical powers to detain. There is no corresponding provision for such individuals to use reasonable force.[138]

The power of civilians to detain was the subject of much debate during the Bill's passage through the House of Lords.[139] At Third Reading, amendments were tabled to remove the power of civilians to detain. It was argued that both the powers CSOs, as well as accredited civilians under a community safety scheme to detain, should be left out of the Bill.

As will be clear from the following discussion, **paragraph 2** of both **Schedules 4** and **5** of the original Bill[140] were removed at Third Reading. This means that the current version of the Bill before the Commons for Second Reading has a new **Paragraph 2** of **Schedule**

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134 See **Part VIII** of this Research Paper for further discussion.
PN Reference 108/2002 25 April 2002. Available from:
http://213.219.10.30/n_story.asp?item_id=45

135 HL Bill 48

136 HL Bill 48

137 Bill 127

138 HL Bill 48

139 HL Deb 7 March 2002 Col 411 et seq. (Committee Stage) and HL Deb 16 April 2002 Col 824 et seq. (Report Stage).

140 HL Bill 48

4 and a new **Paragraph 2** of **Schedule 5**.[141] For the avoidance of doubt, any reference in the following discussion to **Paragraph 2** of either **Schedule 4** or **5** means **Paragraph 2** at Third Reading in the Lords, and not the replacement **paragraphs 2** of the Bill which are currently before the Commons.[142]

b. The removal of the powers of civilians to detain

At Third Reading, two amendments were tabled to remove the power of civilians to detain. The spokesperson for the Liberal Democrats on Home Affairs, Lord Dholakia, moved Amendment 37 to leave out **paragraph 2** of **Schedule 4** of the original Bill.[143] This amendment was intended to remove the power of CSOs to detain.[144] At a later stage of the Third Reading, Lord Dixon-Smith moved Amendment 61 to leave out **Paragraph 2** of **Schedule 5** of the original Bill.[145] This amendment was intended to remove the power of accredited civilians under a community safety scheme to detain. The debates on both amendments raised the same issues over whether civilian employees of the police service should be given the power to detain.

When introducing Amendment 37, the Liberal Democrat Home Affairs Spokesperson, Lord Dholakia, said that:

> When the liberty of the individual is concerned, we should ensure that the power of detention is exercised by a constable.

He added that CSOs should not have the power to use reasonable force to detain conferred by **Paragraph 4, Schedule 4** of the original Bill.[146]

Lord Dholakia made similar observations in respect of the power for accredited civilians to detain.[147] He questioned the practicalities of detaining a suspect for 30 minutes while waiting for a constable:

> Only real policemen should have the power to detain. In any case, I do not believe that one could get a constable to attend a low-level crime within 30 minutes: ask anyone who has had his car radio stolen or his fence broken. The warden will hold the person for 30 minutes, looking at his watch every second. If the constable does not arrive in time, the warden will have to let that person go. That is plain daft.

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[141] Bill 127
[142] HL Bill 74, not Bill 127
[143] HL Bill 48
[144] HL Deb 25 April 2002 Col 404
[145] HL Bill 48
[146] HL Bill 48
[147] Ibid Col 417

Lord Dixon-Smith similarly argued that the act of detention would be "completely ineffective" without the attendance of a police constable within 30 minutes.[148]

Lord Carlisle questioned whether **Paragraph 2** of the original Bill did in fact contain a power to detain. He observed that while a CSO could require a person to remain with him for 30 minutes under Paragraph 2, the CSO could not compel the suspect to remain unless he also had been given a power to use reasonable force by **Paragraph 4** of **Schedule 4**[149] [now **Paragraph 3** of **Schedule 4**[150]]. Later, Lord Carlisle queried whether there was a power to detain by force only in some circumstances but not in others.[151] Lord Avebury similarly expressed the view that it was not clear how **Paragraph 2, 3,** and **4** of the original **Schedule 4** would work in practice.[152]

Lord Rooker spoke on behalf of the Government in favour of CSOs' power to detain under **Paragraph 2** of **Schedule 4** of the original Bill. He stated the Government's view that there would be enough safeguards in the Bill to ensure that the powers were used appropriately:[153]

> The chief constable can place restrictions and conditions on a designation. That will ensure that chief officers can mould the extension of powers to fit the policing of an area. It is important to point out that that is a matter for the chief constable, not for the Government. For example, a community support officer may be restricted geographically to ensure that a particular area is focused on. As I said earlier, communities that have a community support officer will know that that officer cannot be moved to other areas at a later date. It will be up to chief officers to decide what restrictions, if any, should be placed on the designation. That arrangement will provide flexibility.

He spoke about who would be responsible for the conduct of designated persons such as CSOs:

> We have made it abundantly clear that the people designated, who are employed by the police authority and are under the direction and control of the chief constable, will come within the remit of the independent police complaints commission and will be obliged to have regard to the relevant PACE codes of conduct.

Later he said:[154]

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148 Ibid. Col 416
149 HL Bill 48
150 Bill 127
151 HL Deb 25 April 2002 Cols 404 and 407
152 Ibid. Col 408
153 Ibid. Col 404
154 Ibid Col 406

> If a chief officer has any concerns about a community support officer's ability to exercise the powers for which he has been trained, he will not issue a designation to that officer. If something goes wrong, he can withdraw or restrict the existing designation. The power is an operational one for the chief constable.

Lord Rooker emphasised that the power of CSOs to detain is strictly limited.[155] The designated person may only detain for 30 minutes using reasonable force. He said that the limited powers would be in line with the anticipated limited role of CSOs in comparison with police officers:

> We envisage their role to be increasing visibility, to be a uniformed presence on the streets and to address anti-social behaviour, public nuisance and disorder. That will free up the time of police officers. However, their precise range of functions will be decided locally from the menu of powers.

He went on to say that without limited powers, the CSOs would be useless, and no chief officer would want to make use of them.

Later he spoke in similar terms in support of the power of accredited civilians to detain.[156]

Lord Dholakia concluded the debate on Amendment 37 by saying that he could not accept that the support officers would have the same standard of professionalism as police officers:

> There is a need for great caution to be exercised here. I do not know whether the Minister has ever worked out the implication of letting loose some of those people in the streets of some of our inner city areas. What started off as being the eyes and ears of the police we are now making into little police officers. I believe that that is unacceptable. The best way to resolve the argument is to test the opinion of the House.

On a division at Third Reading, the Lords agreed to Amendment 37 by 168 to 121 (removal of powers of CSOs to detain). This represented a Government defeat by which **Paragraph 2** of **Schedule 4** of the original Bill[157] was removed.

Similarly, on a division at Third Reading, the Lords agreed to Amendment 61 (removal of powers to detain for accredited civilians) by 158 to 101. This represented a Government defeat by which **Paragraph 2** of **Schedule 5** of the original Bill[158] was removed.

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155 Ibid. Col 405
156 HL Deb 25 April 2002 Col 417
157 HL Bill 48
158 HL Bill 48

In a Home Office press release, the Government has indicated its intention to reintroduce the power to detain in the Commons.[159] The Government Minister said that the powers were essential to the effectiveness of the CSOs and accredited civilians.

3. Community safety accreditation schemes

a. Introduction

When the Bill was originally introduced to the House of Lords, the provisions on community accreditation schemes were contained in **Clause 34**.[160] After several amendments inserted extra clauses into the Bill, the numbering of the clause had changed. By Third Reading, **Clause 36** of the Bill contained the provisions on community accreditation schemes.[161] The numbering of this clause has not changed since Third Reading. Thus the provision on the community schemes can be found in **Clause 36** of the current version of the Bill, which is before the Commons for Second Reading.[162]

Under powers in the Bill as originally introduced, **a** chief officer would have the power to establish and maintain a community safety accreditation scheme within his force area. This would aim to contribute to community safety and security, and combat crime and disorder, nuisance and anti-social behaviour. Under the original **Clause 35**[163] [now **Clause 37**[164]] a chief officer would have the power to accredit local authorities or employers with whom he had entered into an agreement to carry out community safety functions. These employers might be, for example, local security firms. **Schedule 5** of the original Bill set out the powers exercisable by accredited employees under the scheme. These powers are narrower than those exercised by community safety officers.

Community safety accreditation schemes were the subject of extensive debate at the Committee Stage, although they were agreed to without amendments at this stage.[165]

b. Non-Government amendment

At Third Reading, the Liberal Democrat Spokesperson, Lord Dholakia, moved Amendment 4.[166] This would require local authorities for the area concerned to be consulted by chief officers before a community accreditation scheme was set up. Lord

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[159] See **Part VIII** of this Research Paper for further discussion.
PN Reference 108/2002 25 April 2002. Available from:
http://213.219.10.30/n_story.asp?item_id=45

[160] HL Bill 48

[161] HL Bill 74

[162] Bill 127

[163] HL Bill 48

[164] Bill 127

[165] HL Deb 7 March 2002 Col 411 et seq.

[166] HL Deb 25 April 2002 Col 374

Dhokalia explained that there was no objection to the establishment of accreditation schemes, but argued for local authorities to be consulted:[167]

> We do not dispute the need to establish and maintain a community safety accreditation scheme. We accept that that will contribute to community safety and security; assist in combating crime and disorder; and it will also help towards diminishing public nuisance and other forms of antisocial behaviour.
>
> We believe that a chief constable has a duty not only to consult with the police authority but also with the principal local authority in his area. Local authorities play an important role in crime prevention. That is ably demonstrated by many of the CCTV schemes which are run in co-operation with them. We cannot and should not exclude local authorities from this important function.

Lord Dixon-Smith supported the amendment. He said that it was absolutely essential to involve local authorities in accreditation schemes.

Lord Rooker did not specifically address Amendment 4, as he focused on other related amendments which were not moved.

The House divided on the question of whether to accept Amendment 4. The amendment was agreed by 151 votes to 127. Thus, the amended clause obliges chief constables to consult local authorities before implementing a community accreditation scheme.

4. Detention Officers

a. Introduction

Clause 33 of the original Bill[168] [now **Clause 35**[169]] provides for chief officers to designate certain civilians as "detention officers." **Part 3, Schedule 4**[170] of the Bill sets out the powers and duties of detention officers. Detention officers would be able to require fingerprints to be taken, arrest a person in the confines of a police station, and could conduct non-intimate and intimate searches of detained persons, for example.

The issue of intimate searches by civilian detention officers was debated extensively in the House of Lords, after a newspaper article alleged that the Government Minister Lord Rooker had withheld information from the House relating to this matter. Subsequently, a non-Government amendment to remove the power to conduct such searches was not agreed.

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[167] Lord Dholakia argued further that such schemes should be restricted to local authorities. However, several further amendments to achieve this were not moved

[168] HL Bill 48

[169] Bill 127

[170] HL Bill 48, remains the Part 3, Schedule 4 in Bill 127

b. The Committee Stage debates

The powers of detention officers were debated at the Committee Stage on 7 March 2002, when Lord Bradshaw tabled an amendment which sought to remove the power of civilian detention officers to conduct intimate searches.[171] Lord Bradshaw said:

> We are concerned that intimate searches may be carried out by community support officers [sic]. We believe that goes rather too far. If someone needs to undergo an intimate search, then that person should be taken to a police station and the search should be carried out by a police officer and should, of course, be subject to all the safeguards that such a search would normally require. For example, an intimate search would not be undertaken in the street.

Lord Bassam of Brighton explained the Government's position. He agreed that this was a highly sensitive issue, and went on to explain the rationale behind the provision. He said that it was only by giving civilians appropriate powers that police officers would be able to spend more time on the beat:

> There is no point in having civilian detention officers if we then give them only limited powers so that they cannot perform the full range of duties necessary. This would require a police officer to stay behind to carry out functions such as intimate searching or administering warnings about the use of samples.

He went on to discuss the safeguards which would be put in place. He pointed out that detention officers would be employed by the police authority, and would be under the direction and control of the chief officer, as police officers are. They would be subject to the disciplinary and complaints procedure. They would also be subject to the safeguards in the *Police and Criminal Evidence Act 1984* (PACE), and the codes issued under PACE.

Under section 55 of PACE, an officer of at least the rank of superintendent may only authorise an intimate search when he has reasonable grounds for believing that someone who has been arrested and detained may have concealed something which could be used to cause physical injury and which he might use while in custody, or if he might have concealed a class A drug. The intimate search can only be authorised where the authorising officer believes that the item cannot be found without such a search taking place. Section 79 of the *Criminal Justice Act 2001*, which is not yet in force, would lower the rank of authorising officer to inspector.

Lord Bassam went on:

> Currently, PACE and Code of Practice C provide other safeguards, which will apply to detention officers. For example, the reasons why an intimate search is

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[171] HL Deb 7 March 2002 Col 438 – amendment 217

> considered necessary shall be explained to the person before the search takes place. An intimate search for drugs may only be carried out on medical premises by a registered doctor or nurse. Whenever an intimate search is carried out, the custody record must state which parts of the body were searched and why they were searched. All of those points must be made plain.
>
> An intimate search for other harmful articles may only be carried out at a police station or medical premises by a registered doctor or nurse unless the superintendent considers that this is impracticable. In such a case, the intimate search will be carried out by a constable or, with the passage of this schedule, a police-employed detention officer.

He outlined further safeguards in the Codes of PACE which would apply to a detention officer. A constable may not carry out an intimate search on a person of the opposite sex, and the reason why it was impracticable for a medically qualified person to conduct it must be recorded. Lord Bassam confirmed that the safeguards would also apply to detention officers who were authorised to carry out such searches. He concluded by saying that PACE and the codes of practice had provided adequate protection for 18 years, and would not be eroded in any way by the new powers given to detention officers.

Lord Bradshaw then questioned whether the powers of detention officers would extend beyond employees of the police authority, and be given to private contractors. He gave as an example those who work for Group 4 or Premier Prisons, who provide a detention service for the police authority in their custody suites. Lord Bradshaw said:

> Can I take it that they would not be allowed to carry out such searches?

Lord Rooker responded:

> I refer again to the first line of Clause 33:
>
> > "The chief officer of police of any police force may designate any person who:
> >
> > a) is employed by the police authority maintaining that force and
> > b) is under the direction and control of that chief officer."
>
> I take that to mean police authority employees.

Later Lord Rooker made a distinction between employees and sub-contractors. He said "people working for contractors would be the employees of someone else not the police authority." Thus he suggested that employees of subcontractors such as Group 4 would not be authorised by the Bill to conduct intimate searches.

The amendment was withdrawn.

c. The Report Stage amendment

On Report on the 16 April 2002, Lord Dholakia moved an identical amendment which sought to remove the power for civilian detention officers to conduct intimate searches.[172] He said that despite the answer given by the Minister at the Committee Stage, he remained concerned. He said that intimate searches would be likely to create serious problems, especially in relation to civilian officers.

Lord Rooker responded by agreeing that the matter was a serious one which the House should address. He reiterated that there would be no point in having civilian officers who lacked powers to perform the full range of duties possible. He continued:

> Intimate searches are comparatively rare, and there is no obvious reason why a suitably trained detention officer should not carry one out in appropriate circumstances. Indeed, it would be better to have the search carried out by a trained detention officer—someone who does it all the time—than by an untrained police officer. Most importantly, the significant safeguards set out in Section 55 of the Police and Criminal Evidence Act 1984 and the PACE code of practice will continue to apply.

He confirmed that the safeguards contained in PACE meant that the circumstances in which an intimate search could be conducted would be limited. He then confirmed that the new powers for detention officers contained in the Bill would not alter the existing safeguards.

The amendment was withdrawn

d. The Guardian article

On 25 April 2002, *The Guardian* newspaper published an article entitled "Secret Plan to Expand Police Privatisation." The article alleged that the Government had deliberately misled Parliament over secret plans to privatise the police force, including a new privatised detention officer empowered to carry out intimate body searches. The paper reported that:

> A leaked briefing paper prepared by Home Office Civil Servants instructs the Home Office Minister Lord Rooker not to tell his fellow peers of plans to contract out detention officers to the private sector.

The article continued:

> The leaked paper – prepared for the Report Stage of the Police Reform Bill in the Lords on April 16 – states: "On no account read out the following paragraph. At

[172] HL Deb 16 April 2002 Col 856 – amendment 163

> the moment the Bill does not allow for detention officers to be contracted out to the private sector, but we are hoping to be able to put forward amendments in the Commons to enable that. Provided they are properly trained, there is no obvious reason why such privately employed staff should not be able to conduct intimate body searches."

The article then reported the Liberal Democrats Home Affairs spokesman, Lord Dholakia, as saying:

> "We are already opposed to detention officers being given powers to conduct intimate body searches, but I think it's even worse if this power is handed out to private contractors, such as Group 4. I find it truly shocking if a minister knowingly withheld this plan from his fellow Peers. It undermines the whole purpose of democratic debate and is a shaming indictment on the Government.

The article then reported that a Home Office spokesman had defended the move, saying that the Government had not made a final decision, or reached complete agreement, to seek these powers. The spokesman reportedly said:

> There is consideration of whether we should do so and that is why Lord Rooker was reminded for his private information while the debate on the other areas of these powers was going ahead.

The matter was raised in the House of Lords just before Third Reading, on the same day as the publication of the Guardian article.[173] Baroness Williams of Crosby said:

> … in view of the fact that the Minister may have been aware of policy suggestions to extend much more widely the privatisation of detention officers and of his assurance to the House that no such intimate searches would be conducted except under the supervision of, to quote his words, "a senior officer" (which the House assumed to mean a senior officer of the police), will the Minister now give an assurance—I ask this with respect for the Minister—that no information that is relevant to matters that are being debated in the House will be held back from the House? That will enable it to conduct its discussions with the fullest possible information and there will be no question of any information being withheld from it that might be relevant to our debate at Third Reading.

Lord Strathclyde similarly asked:

> On the point that the noble Baroness, Lady Williams, raised, is it true that the noble Lord has been asked to keep planned government policy secret from Members of this House?
>
> […]

[173] HL Deb 25 April 2002 Col 366

> What is at issue is not just the reputation and integrity of the Government and of the Minister but also the reputation of this House for being a House that can hold the Government to account and scrutinise effectively. I hope that the Minister can offer a full explanation of what has been going on in relation to a matter that increasingly has a very bad smell about it.

Lord Rooker then addressed the House:

> First, no civil servant has instructed me to do anything. It does not work that way round; I instruct civil servants. One of the instructions—this will be confirmed by the DSS and MAFF—that civil servants who brief me regularly received, so far as parliamentary activity is concerned, involves the fact that I cannot stand at the Dispatch Box and read out paragraph after paragraph of narrative without putting in my own bit; I therefore prefer bullet points. They usually get the instruction that if there is something that I should say precisely—that is, because of the legal consequences—that should be spelt out, and if there is something in the background that I should not say, they should make sure that that is there as well. From that point of view, the instruction flows in exactly the opposite way to that which people might have suspected. That is that matter out of the way.
>
> Leaving aside the article in the Guardian for a moment, I defy anyone who reads the briefing that the Guardian used—that is, the notes that were there for me on the amendment's purpose and effect; the speaking notes, some of which I used; and the PACE information, which I used extensively—and what is in Hansard to substantiate any claim that I misled, deliberately or otherwise, the House or the noble Lord, Lord Dholakia. I refute that absolutely and without any qualification whatever.
>
> The fact is that on the issue that we were discussing about detention officers, we have no secret plans to privatise any part of the police service. I do not think that the briefing would lead anyone to that conclusion. There is no question of misleading Parliament. The position is that the Home Office has received representations from a number of police forces—the figure is somewhere round about 10—which were and are considering contracting out custody functions to private providers on efficiency grounds. The Government have therefore been considering whether the Bill should allow forces the same opportunity to give appropriate police powers to private-sector providers if functions are contracted out—that is the choice of the police authority, not the Home Office—as police authorities have in relation to civilians. It is already the case that they can contract out.
>
> It is not even true to say that no final decisions have yet been made. The suggestion has been dealt with by Home Office police Ministers and others but it has not been approved within the government decision-making machinery—the LP committee. There is no clearance for it. There is no plan. There is no secret plan. But discussions take place in government all the while. And in the context of the debate, I held nothing back. When the Bill reaches another place, it is possible that a government amendment may be put forward to that effect. I do not

know. There is no government policy on the issue as I speak, and, therefore, there is no certainty whatever about this matter. It would not be to anyone's benefit if we had to go through what might or might not happen.

However, the fact is that if any proposals came forward, they would first have to be approved by the Commons and placed in the Bill. Then, as I repeatedly inform my colleagues in the Home Office regarding this Bill, anything that we want must receive consent in the House of Lords. "Consent" is a word that my noble friend the Chief Whip has impressed upon me since my arrival in this House. This place works by consent. It is fairly obvious that it must, given the arithmetic of the representation here. Therefore, proposals would have to be approved by this House and nothing would be done in secret.

The type of functions being considered are analogous to those already carried out by private sector employees working in privately run prisons. But it would be for the police forces to choose how they use the support staff. I repeat the central point that I made in answer to the noble Lord, Lord Dholakia—anyone can cross-check the notes that I had. I made it absolutely clear that, under the Police and Criminal Evidence Act codes, the people who carry out such searches are in the main doctors and nurses. They are medical practitioners and they do so only under the authority of a senior police officer. Only in a few extreme circumstances, where a doctor or nurse is not available, will the detention or custody officers carry out that function with the safeguards in Section 55 of the Police and Criminal Evidence Act and under the aegis of a senior police officer. Therefore, the idea that in future any Tom, Dick or Harry would be asked to carry out that work is absolute nonsense. It would not happen. All the safeguards would apply in all the circumstances.

[…]

That is the position… Not only did I not tell any lies; I did not mislead any Member of this House either deliberately or by accident. I am not using this as an excuse, but I have not been asked any questions about this matter either today or during the previous stages of the Bill, and the issue was not relevant.

However, there is no government policy for me to announce or defend in that respect because there is no decision. There is not even a policy decision in the Home Office. The request was put to us initially by the police themselves when they saw the White Paper and the Bill. Some police forces are already considering contracting out some of those services, as is their right. That is the situation. Although no one has said it here, I deeply resent the idea, as set out in the first sentence of the article in the Guardian, that the Government have—that is, I have—deliberately misled Parliament. I refute that absolutely.

The debate continued when Lord Dholakia moved Amendment 52 which sought to remove entirely the power of detention officers to conduct intimate searches.[174] When moving the amendment Lord Dholakia said that he would not dwell on the article which had appeared in the *Guardian*. He went on to say:

> I want to record my considerable respect for the noble Lord, Lord Rooker, who has brought a breath of fresh air into your Lordships' House. He has often put aside his written papers and has not hesitated to criticise government departments about their handling of some past issues. I never believed that any civil servants would have the courage to tell the noble Lord what he should or should not say. But I am sure that someone will pay a very heavy price for such advice.

He went on to comment that intimate searches of police detainees should not be confused with those done in privatised prisons:

> People who are detained in police custody are innocent until proved guilty. I used to receive most complaints about that concern when I was at the Police Complaints Authority. Of course there will be instances where such examinations are necessary, but, I suspect, only in isolated cases. That is why safeguards, including the authority of a senior officer are required when carrying out such searches.

On the question of whether doctors or nurses would always carry out intimate searches:

> We accept that doctors and nurses in those few and isolated cases are best equipped to carry out this process. Occasionally, due to unavailability of doctors and nurses, custody officers with police powers may have to perform such searches. Again, there are considerable safeguards in relation to that particular power.
>
> A complaint that I often receive is that not only does one feel physically abused but that often this is accompanied by verbal abuse. It is a degrading practice, both for the victim and for the officers. No one disputes that sometimes it may be necessary. But in this present day and age, with all the available electronic gadgets and systems, is it necessary to resort to this particular level of intimate search?

Lord Rooker responded by reiterating that the circumstances in which a designated person, including a detention officer, could conduct an intimate search would be extremely limited. He went on to say:

> The noble Lord made the point about the modern use of technology. An intimate search is only made if there are reasonable grounds to believe that an item is there and that it cannot be discovered in any other way. Any search must be conducted

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[174] HL Deb 25 April 2002 Col 412

> by a registered doctor or a nurse, unless that senior officer authorising the search considers it is not practicable, for example, where he reasonably suspects that the person has concealed a harmful article on himself, such as a razor blade and no doctor or nurse is available to conduct the search. Of course the person carrying out the search must be of the same sex as the detainee. I do not think that I have mentioned that specifically. That is part of the existing rules. That is not changing.

Lord Dholakia responded that he was grateful to the Minister for his explanation. He went on to say that he continued to seek leave to test the opinion of the House on what was a contentious matter.

On a division, the Lords rejected Amendment 52 by 106 to 54. Thus the power for civilian detention officers to conduct intimate searches in **Part 3** of **schedule 4** of the Bill remains in the current version of the Bill.

5. Increase in powers to impose Anti Social Behaviour Orders.

a. Introduction

Chapter 2 of **Part 4** of the original Bill contains provisions which would modify and supplement existing police powers.[175] At Second Reading the Government announced that it would be tabling amendments to this part of the Bill which sought to extend the current powers to impose anti-social behaviour orders (ASBOs).

ASBOs were introduced by the *Crime and Disorder Act 1998*, which aimed to combat a range of anti-social behaviour. Under section 1, a local authority or the police may apply to the magistrates' courts for ASBOs where an individual over 10 years of age has acted "in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household" and an ASBO is necessary to protect persons in that local government area from further anti-social acts by that individual.

Further information on ASBOs can be found in the Library's standard note which is available from the Parliamentary intranet.[176] The note covers recent Parliamentary debates over whether the use of ASBOs should be revised and extended.

b. The Government's Amendments

During the Second Reading debate of the Bill in the House of Lords, the Government announced its intention to bring forward amendments to extend the use of ASBOs. Lord Rooker announced:

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[175] For full explanation of Chapter 2 Part 4, please see the Library research paper RP 02/15

[176] "Anti-Social Behaviour Orders" SN/HA/1615
http://hcl1.hclibrary.parliament.uk/notes/has/snha-01656.pdf

> Finally--I regret this but it is a necessary part of police legislation--we intend to bring forward at the appropriate time government amendments to strengthen the effectiveness of the anti-social behaviour orders. That is a vital part of the Bill for Members both of this House and the other place. We want to extend the use of such orders to registered social landlords and the British Transport Police. We want to introduce a system of interim ASBOs so that communities can be protected pending the outcome of a full hearing. We want to enable anti-social behaviour orders to travel with the people on whom they have been served. That will ensure that people cannot escape the consequences of such an order by moving from one area to another. We also propose to explore whether or not, to save time, there is a role for county courts in making orders when they are already dealing with an eviction notice or other civil proceedings against an individual.

The Joint Committee on Human Rights (JCHR) published its report on *the Police Reform Bill* in March 2002.[177] The Committee voiced a number of concerns, which they set out in a letter to Lord Rooker. The letter is annexed to the Report. The Joint Committee asked why proposed measures to extend the use of ASBOs had not been included in the Bill as published.

> **Extending the use of anti-social behaviour orders.**
>
> In your speech opening the Second Reading debate you gave notice that the Government intends to bring forward amendments to the Bill to extend the use of anti-social behaviour orders (ASBOs) under section 1 of the Crime and Disorder Act 1998.
>
> […]
>
> These are wide-ranging extensions to the use and effect of an already controversial measure contained in the Crime and Disorder Act 1998. The amendments will have important human rights implications, but they will not be covered either by the Minister's section 19 statement or by the Explanatory Notes to the Bill. There is not even the justification here of urgency, let alone emergency. The Committee is very concerned that a Bill has been introduced knowing that the provisions giving rise to some of its most sensitive human rights issues will only be introduced by way of amendment, reducing the opportunity for 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.

It later asked:

> Why were the measures to extend the use of anti-social behaviour orders (ASBOs) under section 1 of the Crime and Disorder Act 1998 not included in the

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[177] 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

> Bill as originally published? The JCHR seeks the earliest possible sight of the proposed amendments to the Bill to make possible full parliamentary scrutiny of proposals which may interfere with human rights.[178]

At the Committee Stage, Lord Rooker introduced the proposed ASBO amendments.[179]

> The anti-social behaviour orders, known as ASBOs…are an important tool in addressing anti-social behaviour. However, ASBO use varies between areas and agencies and, to aid the battle against anti-social behaviour, the Government wish to increase the effectiveness of ASBOs by introducing these six amendments.
>
> The proposed new clauses will amend and add to the provisions of Section 1 of the Crime and Disorder Act 1998. Amendment No. 298A seeks to enable the British Transport Police and registered social landlords to apply directly for anti-social behaviour orders by giving them "relevant authority" status. Each faces particular problems with anti-social behaviour and this proposed new clause will empower them to deal with such problems in an effective and timely manner. It specifies that the British Transport Police and registered social landlords are able to apply for ASBOs to protect persons who are on their premises or in the vicinity of their premises.
>
> Amendment No. 298A also seeks to extend the area over which an ASBO can be made. It allows for the protection of persons anywhere within England and Wales or a defined area within England and Wales and tackles the problem of an offender simply moving to another area to continue the anti-social behaviour. The applicant will not be required to name or consult each local government area to be covered by the ASBO; paperwork therefore will be kept to a minimum.
>
> Amendment No. 298B seeks to add a new Section 1A to the 1998 Act which enables the Secretary of State to add other non-Home Office police forces to the list of relevant authorities should this be required in the future—for example, the Royal Parks Police—hence avoiding the need for primary legislation.
>
> Amendment No. 298C seeks to add a new Section 1B to the 1998 Act which enables county courts to make anti-social behaviour orders where the person who is to be the subject of the ASBO is party to proceedings that involve anti-social behaviour—for example, in eviction proceedings. Relevant authorities must also be party to those proceedings in order to make the application for the ASBO. If the relevant authority is not party to the proceedings, it may apply to the county court to be joined in the proceedings. Introducing the ASBOs into the county court removes the need for a separate legal process and enables the community to be protected more quickly.

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[178] 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

[179] HL Deb 7 March 2002 Col 723

> Amendment No. 298D seeks to add a new Section 1C to the 1998 Act which enables a court dealing with criminal proceedings to make an order equivalent to an anti-social behaviour order against a person who has been convicted of a criminal offence in addition to the sentence or conditional discharge. The court must be satisfied that the offender has acted in an anti-social manner that has caused or is likely to cause harassment, alarm and distress, and that the ASBO is necessary to protect persons in England and Wales against further anti-social acts. There is no requirement for a relevant authority to apply for the ASBO on conviction. The court will be able to grant the ASBO by its own motion. This amendment also removes the need for a separate legal process and enables the community to be protected more quickly.
>
> Amendment No. 298E seeks to insert a new Section 1D into the 1998 Act which introduces an interim ASBO that can be made by the courts on application by a relevant authority. It is for a fixed period pending the outcome of a full hearing. The effect of the interim anti-social behaviour order would be similar, as regards the prohibitions it may impose and the sanctions for breach, to a full ASBO. It will provide faster protection to the community and is especially beneficial to witnesses.
>
> Amendment No. 298F seeks to introduce a new Section 1E which amends the consultation requirements for relevant authorities applying for ASBOs. The clause requires the Home Office police force or local authority to consult before applying for an ASBO. It also requires the British Transport Police and registered social landlords to consult both the Home Office police and the local authorities before making an application for an ASBO. It removes the requirement for relevant authorities to consult authorities in adjoining areas which may be covered by the ASBO.
>
> I hope that that brief summary of the proposed new clauses will enable those who are experienced in this matter to realise that the provisions will give more teeth, and practicality, to the anti-social behaviour order. At meetings of one of my local police consultancy committees, which I attended on a regular basis, great hopes were expressed for the ASBOs. Their difficulty in getting off the ground caused a degree of discontent. At present, almost 500 have been brought into being. The proposed changes are highly practical. They will allow ASBOs to "take off".

Lord Dholakia said that it would take some time to read through the amendments and interpret precisely what they meant. He observed that he had "no problem with amending section 1 of the *Crime and Disorder Act 1998*." However, he said that he had a difficulty with the fact that the "major amendments" to the *Crime and Disorder Act 1998* introduced at the Committee Stage had not been through machinery which was established to examine their implications – the Delegated Powers and Regulatory Reform Committee and the Joint Committee on Human Rights.[180]

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[180] Ibid. Col 725

Lord Corbett of Castle Vale welcomed the fact that social landlords would be able to apply for ASBOs directly under the new clause as this would make the procedure more efficient than having to go through the local authority and police force.

Lord Rooker then addressed the concerns voiced by Lord Dholakia that the late introduction of these provisions had not been subject to appropriate scrutiny by the appropriate committees:

> They were not ready for the Bill, and we did not want to delay the Bill. I should point out that they are being introduced in Committee, not on Report; so I shall not take too many complaints that we have not introduced them at the first available opportunity after the Bill was printed.
>
> A further memorandum has been submitted to the Delegated Powers and Regulatory Reform Committee covering Amendment No. 289B. The Joint Committee on Human Rights raised a question on the amendments. Its report is in the form of a long letter to me containing 17 questions... A reply should be sent to the Joint Committee tomorrow. The Government's view is that the amendments, and also the provisions in the Crime and Disorder Act, are fully compatible with the Human Rights Act.

On question, the Government's amendments were agreed to.

c. Further Report from the Joint Committee on Human Rights

In its fifteenth report, which supplements its thirteenth report on the Bill, the Joint Committee on Human Rights commented on the changes to the law on ASBOs.[181]

They repeated that the amendments contained wide-ranging extensions to the use and effect of an already controversial measure. The Committee noted that ASBOs frequently interfere with Convention rights to freedom of expression (Article 10 ECHR), freedom of association (Article 11 ECHR) and the right to respect for private and family life (Article 8 ECHR). Although a recent Court of Appeal judgement had determined that ASBOs did not breach the right to a fair hearing under Article 6 ECHR, the Committee pointed out that the compatibility of ASBOs with other ECHR rights had not been addressed.

The Committee went on to accept that the amendments would be debated in both Houses, subject to a ministerial statement under section 19 of the HRA in the Commons, as well as being discussed in the later edition of the explanatory notes. However they said:

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[181] Police Reform Bill: Further Report 15th Report of Session 2001-02 HL Paper 98, HC 706
Further discussion of the thirteenth report can be found in Library Research Paper RP 02/15

> We regard it as an undesirable practice to introduce a Bill knowing that important provisions which have sensitive human rights implications are not available for scrutiny at that point. In the case of these proposals, there is not even the justification of urgency, let alone emergency.

The Committee concluded that these proposals deserve the fullest possible scrutiny by each House on human rights grounds.

6. Miscellaneous Government amendments

At the Committee Stage, the House of Lords agreed various amendments tabled by the Government relating to the greater use of civilians under **Part 4** of the Bill.

Primarily, these amendments were intended to bring the National Crime Squad and the National Criminal Intelligence Service within the Bill's provisions for allowing support staff to be designated as investigating officers.[182] Lord Rooker explained the amendments as follows:

> I must make it clear that the National Crime Squad and the National Criminal Intelligence Service are not police forces. Non-police members are employed by the respective service authorities and are under the control of their respective directors-general. In the same way as for police forces, there can be much value in having civilian investigating officers in specialist areas such as financial and information technology crime. That is particularly relevant for the National Crime Squad, which houses the Hi-Tech Crime Unit, and for NCIS, some of whose personnel work in the unit as part a close-knit team. In addition, both organisations have experience and expertise in investigating financial crime, as well as other specialist work.
>
> Under the amendments, the provisions of Chapter 1 of part 4 will be applied to NCS and NCIS in the same manner as they currently apply to forces. I should stress that the amendments are concerned only with the designation of support staff as investigating officers. Given the different role of the National Crime Squad and the National Criminal Intelligence Service as compared with the 43 forces, there is no requirement—and these amendments do not provide—for the directors-general to designate persons as community support officers, detention officers or escort officers.

The House of Lords also agreed to an amendment tabled by the Government which would make the "Service Authority" of an accreditation scheme liable to be sued in tort for the unlawful conduct of their employee.[183]

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[182] HL Deb 7 March 2002 Col 445
[183] HL Deb 7 March 2002 Col 511

At the Report Stage, the House agreed a Government amendment which meant that accredited civilians (under a community safety accreditation scheme), as well as designated civilians (such as CSOs) would have to have regard to the codes of practice issued under the *Police and Criminal Evidence Act 1984*.[184]

Finally, the House of Lords agreed a Government amendment which would enable the British Transport Police to issue fixed penalty notices where a motoring offence has been recorded on an enforcement camera.[185]

V Miscellaneous provisions

A. Introduction

Part 6 of the Bill contains miscellaneous provisions which deal with matters such as the requirement for police authorities to publish a three year strategy plan. This part also to clarifies the basis of civil liability of various bodies including chief officers of police, the Directors General of NCIS and the NCS and Central Police Training and Development Agency. A full explanation of the miscellaneous provisions can be found in the Library Research Paper 02/15 which is available from the Parliamentary web-site and intranet.

Some of the amendments to the provisions in **Part 6** made in the House of Lords will be examined.

B. Amendments made by the House of Lords

a. Payment of expenses of police authorities

The House of Lords agreed amendments to deregulate schemes for the payment of expenses to members of police authorities. This would become a matter for police authorities to determine.[186]

b. Crime and disorder reduction partnership

Clause 68 of the original Bill[187] [now **Clause 81**[188]] added to the current list of those authorities which can be part of a statutory crime and disorder reduction partnership under the *Crime and Disorder Act 1998*. The House passed a Government amendment at the Report Stage which would give police authorities and fire authorities a role within the statutory partnerships.[189]

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184 HL Deb 16 April 2002 Col 930
185 This type of fixed penalty is known as a "conditional offer." HL Deb 16 April 2002 Col 880
186 HL Deb 16 April 2002 Col 916
187 HL Bill 48
188 Bill 127
189 HL Deb 16 April 2002 Col 917

c. Direct recruitment of officers for NCS and NCIS

The original Bill would enable the National Crime Squad and the National Criminal Intelligence Service to recruit officers directly, rather than solely on secondment from other forces.[190] The House of Lords agreed a Government amendment which would enable regulations to be made to provide for the necessary formal rank structure and promotion system.[191]

d. President of ACPO

The House of Lords agreed a Government amendment which would enable the president of ACPO to remain at the rank of Chief Constable, and continue to have the full powers of a police officer. Currently, the president of ACPO can only serve as president for one year and then has to retire from the force or resign.[192]

During the debate, Lord Condon, the former Commissioner for the Metropolitan Police, said that the amendment would put ACPO in a similar position to the Police Superintendents' Association and the Police Federation.[193]

VI Duty of Consultation

In Committee, concerns were raised as to whether the duty of the Home Secretary to consult before exercising his powers under the Bill were adequate.[194] The Government recognised these concerns, and responded by tabling several amendments. Generally speaking, where the original Bill provided that the Home Secretary must consult "such persons as he thinks fit," the current Bill provides he must consult persons who he thinks represent the police authority and chief officers, as well as such persons as he thinks fit.[195] Furthermore, additional duties to consult have been added to various provisions of the Bill.[196]

VII Further Report of the Joint Committee on Human Rights

A. Introduction

The *Human Rights Act 1998* incorporated the European Convention on Human Rights into United Kingdom law.

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[190] Clauses 64 and 65 of the original HL Bill 48, now Clauses 71 and 72 of the current Bill 127
[191] HL Deb 12 March 2002 Col 743. Now contained in Clauses 73 to 76 of the current Bill 127.
[192] HL Deb 12 March 2002 Col 784. This amendment is now contained in 80 of the current Bill 127.
[193] Ibid. Col 785
[194] HL Deb 28 February 2002 Col 1543 et seq.
[195] See HL Deb 15 April 2002 Col 736, 784 and 789
[196] See HL Deb 15 April Col 733, 786, 804, 809 and HL Deb 16 April 2002 Cols 877, 879, 916 and 933.

In March 2002, the Joint Committee on Human Rights published its thirteenth report on the *Police Reform Bill*, and raised concerns about the compatibility of some aspects of the Bill with the European Convention on Human Rights (ECHR).[197] This report is discussed in the first Library Research Paper on the *Police Reform Bill* RP 02/15.[198]

At the end of February 2002, the Joint Committee wrote to the Minister in charge of the Bill in the Lords, Lord Rooker, to raise a number of questions about the Bill's compliance with the ECHR.[199] The Committee undertook to report further on the Bill once they had considered the Government's response to the questions.

The response, in the form of a memorandum from the Home Office, was received on 13 March 2002. The Joint Committee then published its fifteenth report in the light of the Government response.[200] The recommendations of the Joint Committee in their further report have been considered in this paper in relation to the relevant parts of the Bill. The following is intended to provide an outline of some of the main recommendations from the fifteenth report which have not yet been discussed by this paper.

B. The Fifteenth Report

The fifteenth report stated that several parts of the Bill raised no concerns relating to human rights such as to require the Joint Committee to draw them to the attention of either House. In particular, **Parts 1** (Powers of the Secretary of State) **Part 5** (Ministry of Defence Police) and **Part 6** (Miscellaneous Provisions) raised no human rights issues.

Part 2 of the Bill (complaints and misconduct) raised some human rights concerns about the use of covert surveillance. **Clause 19** of the original Bill[201] **[**now **Clause 18**[202]**]** would enable the Home Secretary to authorise covert surveillance during investigations by the Independent Police Complaints Commission. In their letter to the Government Minister, the Joint Committee asked whether the Government was satisfied that ECHR rights would be adequately protected by the provisions of the *Police Reform Bill*, which "appear to give blanket discretion to the Secretary of State, without including any express requirements as to how that discretion might be used."[203]

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197 *Police Reform Bill* House of Lord House of Commons Joint Committee on Human Rights Thirteenth Report of Session 2001-02 HL paper 86 HC 646 (March 2002)

198 Page 90

199 This letter is set out in an annex to the thirteenth report on the Bill.

200 *Police Reform Bill: Further Report* House of Lords House of Common Joint Committee on Human Rights Fifteenth Report of Session 2001-02 HL paper 98 HC 706 (March 2002)

201 HL Bill 48

202 Bill 127

203 Ibid. Page 7

The Government responded that it intends the powers in the Bill to be exercised by delegated legislation "which will be made by suitable adaptation of and amendment to the regulation of *Investigatory Powers Act 2000*, and the *Police Act 1997*…. To ensure that the IPCC is put in exactly the same position as a police force in relation to the powers and safeguards to the exercise of those powers."[204] The Joint Committee said that consideration should be given to making the purpose for which the Government intended to use the power into an express condition on the face of the Bill, which would be a prerequisite for the exercise of that power.

The Joint Committee went on to consider the duty to involve complainants in the complaints process which is contained in **Clause 20** of the original Bill.[205] They had questioned this clause in their original letter to the Government.[206] The Government response included an undertaking that any regulations would be fully compliant with developing case-law on the issue. Thus the Joint Committee concluded that **Clause 20** was now capable of being operated compatibly with human rights.[207]

The Joint Committee raised concerns in its thirteenth report as to whether some provisions of **Part 3** (Removal, Suspension and Disciplining Officers) might contravene Article 6 of the ECHR which provides the right to a fair trial.[208] In the light of further analysis, and the response from the Government, the Joint Committee concluded that it was unlikely that the provisions of **Part 3** of the Bill would be held to engage rights under Article 6 ECHR.

VIII Government Reaction to the House of Lords Defeats

In a Home Office Press release following Third Reading in the Lords, the Home Office Minister John Denham said that the Government's programme of police reform is on track.[209] Mr Denham said:

> Key elements of the Bill designed to raise policing standards have been retained. These include new powers for the Secretary of State to ensure best practice through codes of practices and regulations and the ability to remove and suspend chief officers in the interests of the efficiency or effectiveness.

He added that the Government would bring forward Commons amendments to reintroduce the Home Secretary's powers which were dropped from the Bill by the Lords.[210]

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[204] The Government response is set out in the annex to the Joint Committee's further report
[205] Now contained in Clause 19 of the current Bill 127
[206] Thirteenth Report 2001-02 Page 6
[207] Fifteenth Report 2001-02 Page 7
[208] Thirteenth Report Page 7
[209] Reference 108/2002 25 April 2002. Available from: http://213.219.10.30/n_story.asp?item_id=45

He also said that the Government would reintroduce the powers for community support officers and accredited persons to detain.[211] He said that these powers were essential to the civilians' effectiveness.

Mr Denham went on to say:

> The Bill is an essential part of Government's police reform programme, aimed at further reducing crime and the fear of crime and raising the performance of the police service as a whole.
>
> Wide variations in performance between forces needs to be tackled by promoting good practice and, where necessary, taking effective remedial action to address poor performance. People have a right to expect the same high standards of policing wherever they live.
>
> Our proposals for reform are driven by the desire to better support front-line officers in the work that they do. Recruiting record numbers of police officers, tackling red tape and bureaucracy, enhancing training and offering a modernised pay and conditions package will help officers provide an effective and modern Police Service.

[210] See Part **I** of this Paper for discussion
[211] See Part **VI** of this Paper for discussion