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# *The Police (Northern Ireland) Bill* [HL]

[Bill 52 2002-03]

The *Police (Northern Ireland) Bill* 2002-03 is due to be debated on second reading in the House of Commons on Monday 10 February 2003. It forms part of the ongoing reform of policing in Northern Ireland, following the Belfast Agreement in 1998, the Patten Report of 1999, and the *Police (Northern Ireland) Act 2000*.

The main provisions of the Bill are intended to:

- adjust the relationship of the Policing Board with the Chief Constable of the Police Service Northern Ireland (PSNI) and the Secretary of State;
- alter some procedures relating to the Policing Board, District Policing Partnerships and the Ombudsman
- allow for the deployment of more police support officers.

The Bill extends only to Northern Ireland.

Arabella Thorp

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## Summary of main points

The *Police (Northern Ireland) Bill* was introduced in the House of Lords as HL Bill 15 on 5 December 2002. It was amended in the Lords, and the current version (Bill 52) is due to be debated on second reading in the House of Commons on Monday 10 February 2003.<sup>1</sup> Explanatory Notes to the Bill are published separately as Bill 52-EN.

It forms part of the ongoing reform of policing in Northern Ireland, following the Patten Report, *A New Beginning: Policing in Northern Ireland*, which was published in September 1999. The *Police (Northern Ireland) Act 2000* implemented a large number of these proposals, and is discussed in Library Research Paper 00/58.

A number of the provisions in the current Bill arise from commitments made by the Government at talks at Weston Park in July 2001, which resulted in the publication of a revised implementation plan for the Patten reforms. Other provisions follow from discussions with the Minister of State for Northern Ireland, Jane Kennedy, with a variety of organisations and parties.

Draft clauses were published on 25 November 2002, along with further clauses submitted as a 'text for consideration'. The Northern Ireland Affairs Committee of the House of Commons undertook pre-legislative scrutiny of the Bill, publishing its report on 28 January 2003.<sup>2</sup>

The main provisions of the Bill are intended to:

- adjust the relationship of the Policing Board with the Chief Constable of the Police Service Northern Ireland (PSNI) and the Secretary of State;
- alter procedures relating to the Policing Board, District Policing Partnerships and the Ombudsman
- allow for the deployment of more police support officers.

Some controversy has arisen over parts of the Bill, including the provisions on:

- reports, inquiries and information requested by the Policing Board;
- public meetings of the Board;
- independent members of District Police Partnerships; and
- the Ombudsman's powers.

The Bill extends only to Northern Ireland, and the majority of its provisions would come into force immediately on Royal Assent. The Secretary of State for Northern Ireland, Paul Murphy, has stated that in his view the provisions of the Bill are compatible with the European Convention on Human Rights.

A glossary of the main terms used in the Paper is provided at Appendix 1.

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<sup>1</sup> see Appendix 2 for a table of the progress of the Bill, with references.

<sup>2</sup> Third Report of Session 2002-03, HC 233



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# I Background

## A. The Patten report

A central concern of the Good Friday Agreement<sup>3</sup> was to bring about a police service capable of attracting and sustaining support from across Northern Ireland as a whole. To facilitate this, the Agreement proposed the establishment of an Independent Commission on Policing for Northern Ireland. The Rt Hon Chris Patten was appointed to chair this Commission, and it published its plans for the future of policing in September 1999.<sup>4</sup> It is now often referred to as ‘the Patten report’, and its main recommendations included:

- A **new oath**, emphasising the upholding of fundamental human rights and the according of equal respect to all individuals and to their traditions and beliefs.
- The creation of a new **Policing Board**, to replace the Police Authority, with a majority of Board members being members of the Northern Ireland Assembly.
- The establishment of a **District Policing Partnership Board** as a committee of each District Council, with a majority elected membership.
- New legislation on **covert policing**, the establishment of a commissioner for covert law enforcement in Northern Ireland and a complaints tribunal, consisting of senior lawyers, with full powers to investigate cases involving covert law enforcement operations.
- The introduction of **video-recording** in PACE custody suites.
- Immediate and substantial investment in a research programme to find an acceptable and less potentially lethal alternative to the **Plastic Baton Round**.
- A comprehensive **audit of the police estate**.
- A rigorous programme of **civilianisation** of those jobs which do not require police powers, training or experience, and a review of police support services with a view to contracting out those services where this will enhance efficient management of resources.
- A slimmer structure at **police headquarters**, reflecting a shift of focus towards community policing and the delegation of responsibility to district commanders.
- The disbandment of the **Full Time Reserve**, as proposed in the RUC’s own Fundamental Review in 1996, but an enlargement of the **Part Time Reserve** from 1,300 to 2,500 officers, with new recruits coming from areas where there are currently few reservists or none at all.
- A **reduction in the size of the force** from the current level of 13,000 officers (including 1,300 in the Part Time Reserve) to approximately 7,500 full time officers over the next 10 years.

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<sup>3</sup> The *Belfast Agreement: an Agreement Reached at the Multi-Party Talks on Northern Ireland*, April 1998, Cm 3883: [www.nio.gov.uk/agreement/htm](http://www.nio.gov.uk/agreement/htm). See Library Research Papers 98/57, 98/76, 00/6 and 00/13 for information on the Belfast Agreement and details about its implementation.

<sup>4</sup> *A New Beginning: Policing in Northern Ireland: The Report of the Independent Commission on Policing in Northern Ireland*, September 1999: <http://www.belfast.org.uk/report.htm>

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

In implementing the proposals of the Commission, the Government's aim has been:

to develop a modern police service, growing out of the Royal Ulster Constabulary, which is both effective and representative of the community it serves and commands the widespread confidence and support it needs.<sup>5</sup>

The government's timetables and goals are set out in a published Implementation Plan, which was revised and updated in August 2001.<sup>6</sup>

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<sup>5</sup> <http://www.nio.gov.uk/issues/policing.htm>

<sup>6</sup> Details are available on the Northern Ireland Office website: <http://www.nio.gov.uk/issues/policing.htm>

An Oversight Commissioner, Tom Constantine, was appointed in June 2000 to oversee the change process, which includes both legislative and non-legislative reform. He is a retired Director of the US Drugs Enforcement Administration and a former Chief of Police for New York State. He has issued six reports so far logging the progress of implementing the report. These are available on his website.<sup>7</sup>

In a summary of the latest developments in policing, published recently by the Northern Ireland Office, the government has set out its view on devolution of policing and criminal justice to the Northern Ireland Assembly:

The Government remains committed to the position set out in the Good Friday Agreement. Once the devolved institutions are working effectively, the Government intends to devolve responsibility for policing and justice functions, as set out in the Belfast Agreement. It needs first to take some major steps to implement the Criminal Justice Review and to make some more progress on detailed implementation of the Patten Report. A final decision to devolve these functions can only be taken at the time taking account of security and other relevant considerations. The Government's target is to devolve policing and justice after the Assembly elections scheduled for May 2003.<sup>8</sup>

## **B. The *Police (Northern Ireland) Act 2000***

The *Police (Northern Ireland) Act 2000* received Royal Assent on 23 November 2000. It was intended to implement the recommendations in the Patten report which the government had accepted following consultation and which required legislation. The background to the Bill which became the 2000 Act, along with discussion of its major provisions, is contained in Library Research Paper 00/58 (5 June 2000).

According to the government's Explanatory Notes to the 2000 Act, its main provisions were:

- to provide for the name of the police in Northern Ireland;
- to provide for the establishment of a Northern Ireland Policing Board to replace the Police Authority for Northern Ireland;
- to require district councils to establish district policing partnerships;
- to make changes to the police planning and objective setting process and introduce new efficiency arrangements;
- to make changes in respect of the police including: a new declaration, a code of ethics for police officers to be issued by the Policing Board, to provide for police officers to inform the Chief Constable of any 'notifiable memberships', to enable the Secretary of State to regulate the flags and emblems of the police;

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<sup>7</sup> [www.oversightcommissioner.org](http://www.oversightcommissioner.org)

<sup>8</sup> *Policing In Northern Ireland - A Summary of the Latest Developments in Policing*, Northern Ireland Office, December 2002(?): <http://www.nio.gov.uk/pdf/polnicurr.pdf>

- to enable the contracting out of the recruitment of police officers; for special recruitment measures to redress the current imbalance in the composition of the police and its support staff in terms of community background and to provide for severance arrangements for police officers;
- to enable the Policing Board to perform its function of holding the police to account through reporting and inquiry arrangements and to require the Board to monitor and assess police performance;
- to make new provisions affecting the Police Ombudsman;
- to repeal and replace parts of existing policing legislation in the Police (Northern Ireland) Act 1998 (the "1998 Act");
- to provide for a Commissioner to oversee the implementation of changes in the policing of Northern Ireland.<sup>9</sup>

Since the Act was passed, a number of changes have been implemented, including:

- On 4 November 2001 a **new Policing Board** with cross-community participation and broad powers to hold the police to account came into being.
- The RUC has been renamed the **Police Service of Northern Ireland (PSNI)** and has a new badge, unanimously agreed by the Policing Board, and a new uniform.
- The first recruits appointed under the new arrangements for **50:50 recruitment** of Catholics and non-Catholics began graduating on 5 April 2002.
- The process of establishing **District Policing Partnerships** has been launched, and the first DPPs are to be set up in the early part of 2003.
- The Board produced the first **annual policing plan** on 18 March 2002.
- Special Branch and Crime Branch are now together under a single Assistant Chief Constable
- A new **Police Fund** was set up in 2002 to help police officers and police widows directly affected by terrorism.

### C. Weston Park commitments

In July 2001 the British and Irish governments held talks with the Ulster Unionists, the SDLP and Sinn Fein at Weston Park in Staffordshire, to move forward the Northern Ireland peace process. As a result, on 1 August 2001 a joint agreement between the two governments was published in a letter to party leaders, inviting their responses.<sup>10</sup> It contained several proposals on policing:

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<sup>9</sup> Explanatory Notes to the *Police (Northern Ireland) Act 2000*, TSO, 2001

<sup>10</sup> Letter from the UK's Northern Ireland Office and the Irish Department of Foreign Affairs to leaders of the parties at the Weston Park talks, 1 August 2001: <http://www.nio.gov.uk/pdf/proposals0108.pdf>

Proposals on policing

8. Both Governments remain committed to a new beginning in policing on the basis set out in the Good Friday Agreement. The British Government reaffirms its determination to bring about such a new beginning by implementing the Patten Report.

9. The British Government will publish a revised Implementation Plan. This will set out in greater detail the plans for implementing, among other matters, Patten's recommendations on the Full Time Reserve, the Part Time Reserve, the closure of Gough holding centre and the future structure of Special Branch. It will also set out the intention to avoid the use of Plastic Baton Rounds, except where there is a serious risk of loss of life or serious injury, while Patten's recommendation for a major research programme on alternatives is completed.

10. The Oversight Commissioner is responsible for overseeing the implementation of the changes recommended in the Patten Report. These are momentous and wide-ranging: it is important to be confident that they are delivering the new beginning intended in the Good Friday Agreement. So, in addition, the British Government will ask the Oversight Commissioner to review the new arrangements in the light of experience. The review will start in March 2002. It will be conducted on the basis of experience during the first year of the Board's operation and report by October 2002.

Legislation will be introduced as soon as practicable thereafter to amend or clarify some provisions to reflect more fully the Patten recommendations. These amendments will be set out in detail in the revised Implementation Plan.

11. On this basis, the British Government will invite the parties to nominate political members to the new Policing Board and complete the process for selection of independent members, so that the Board will be established by the end of September.

12. The British Government is also establishing the Police Fund, which will assist families of officers killed by terrorist action, and the RUC GC Foundation, which will mark the sacrifices and honour the achievements of the RUC.

13. The British Government will shortly publish a full Implementation Plan for the Criminal Justice Review, together with draft legislation, with a view to passing the necessary Bill in the current session of Parliament.

Concerns have been raised that there was no statement to the House of Commons on this agreement, let alone a debate or vote.<sup>11</sup>

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<sup>11</sup> Quentin Davies, HC Deb 12 December 2002 c640

## D. Revised Patten implementation plan

Following its commitment in the Weston Park talks, the government published a revised Implementation Plan for the Patten proposals in August 2001, entitled *The Community and the Police Service*.<sup>12</sup> It identified several areas where legislative changes were desirable, including amendments to:

- clarify the respective responsibilities of the Chief Constable of the Police Service of Northern Ireland (PSNI), the Policing Board and Secretary of State in respect of setting policing objectives and the policing plan;
- amend the existing arrangements for the Policing Board to commission reports and initiate inquiries;
- make clear that community policing is at the core of the Police Service of Northern Ireland's functions, by ensuring that all police officers are required to carry out all their duties with the aim of securing the support of, and acting in co-operation with, the local community;
- enable the Chief Constable to second officers from An Garda Síochána to serve in the PSNI with full policing powers;
- give the Police Ombudsman the power to investigate police practices and policies, in addition to her current power to investigate police complaints.

It set out for each recommendation the work required, lead responsibility and timescale for implementation. It also gave an account of the progress made in implementing Patten, with updated timescales and targets.

Press reports suggested that, although the revisions had been designed to persuade Catholics to join the police in Northern Ireland, Sinn Fein rejected the updated implementation plan for 'not going far enough'.<sup>13</sup> However, the moderate nationalist SDLP announced its support for the revised plan after it had been backed by the Irish Government and Catholic bishops in Northern Ireland.<sup>14</sup> The Ulster Unionist Party welcomed some aspects of the updated plan but said significant areas of concern remained.<sup>15</sup>

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<sup>12</sup> *The Community and the Police Service: Report of the Independent Commission on Policing for Northern Ireland: Updated Implementation Plan*, Northern Ireland Office, August 2001: <http://www.nio.gov.uk/pdf/patten2001.pdf>

<sup>13</sup> 'Sinn Fein turns down reshaped plan for police', *Times*, 18 August 2001

<sup>14</sup> 'SDLP puts its weight behind police reforms in Ulster', *Times*, 21 August 2001. See John Hume, 'A police force for the people', *Financial Times*, 22 August 2001.

<sup>15</sup> 'UUP needs to see all four pieces in the Weston Park jigsaw: Lady Sylvia Hermon MP', *Ulster Unionist Party press release* 17 August 2001: <http://www.uup.org/current/displayfullpress.asp?pressid=239>

## E. Review of policing reform in Northern Ireland

The revised Patten Implementation Plan promised a review of the new policing arrangements, with amending legislation to follow. This review began in March 2002 and had three strands:

1. a report from Her Majesty's Inspector of Constabulary, Dan Crompton;
2. a report from the oversight Commissioner, Tom Constantine; and
3. consultation and meetings between the Minister of State, Jane Kennedy, and interested parties and organisations

Dan Crompton's annual inspection of the PSNI for 2001-02 therefore focused on the impact of the new arrangements on police effectiveness. It was published on 6 November 2002, and the following paragraphs were included in its summary:<sup>16</sup>

3. Her Majesty's Inspector identifies the continued reduction in the number of officers available for deployment to operational duties as having had a significant impact upon the attempts of the Service to achieve its policing objectives. There are many contributory factors to this 'resource trough' including officers leaving the Service through 'severance', reducing numbers in the full-time reserve, high levels of absences through sickness, numbers on restrictive/recuperative duties, little or no progress towards civilianisation, and a continued commitment of officers to security duties.

[...]

6. Her Majesty's Inspector fully appreciates that it will be some time before newly recruited officers become available for deployment in a critical mass sufficient to reverse the trend of a reducing workforce. He is, however, convinced that opportunities exist to significantly ease the pressure currently experienced due to a lack of resources. He therefore recommends within this report that the Service implements a programme aimed at addressing all aspects of human resources, including reducing sickness, implementing civilianisation, reviewing security deployments, communicating its intentions with regard to the full-time reserve, and further recruitment of the part-time reserve.

[...]

8. There is little doubt that the delivery of community policing at district command level has been hindered by the delays in establishing District Policing Partnerships (DPPs). Her Majesty's Inspector was encouraged by the fact that DPPs would be established in the near future, and considers that this will present

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<sup>16</sup> 2002 *Inspection: Police Service of Northern Ireland: a report by Her Majesty's Inspectorate of Constabulary*: <http://www.homeoffice.gov.uk/hmic/psni02.pdf>

district commanders with opportunities to adopt a more inclusive partnership approach to addressing local policing issues.

[...]

**10.** In his three previous Inspection reports Her Majesty's Inspector emphasised that, despite significant change having been implemented within the Service, success in policing does not rest with police officers alone. Responsibility also lies with political leaders and the community as a whole which, despite sectarian differences, must play a fundamental role in the peace process and the success of a partnership, community based policing service in all parts of Northern Ireland.

[...]

**16.** Of particular concern is the loss of experience, caused by severance, within the CID. Regionally, all CID staff are currently focused upon ongoing major crime inquiries (homicides). Level 2 criminality (cross boundary borders between DCUs) does not appear to be receiving the attention that it should. Her Majesty's Inspector recognises that there are no easy solutions to 'bridge the experience gap' - but it must be filled if the viability of the CID as an effective crime fighting force is to be maintained. He recommends that experienced detective officers should be seconded into the PSNI from 'outside' forces and that consideration be given to employing retired senior investigating officers as 'cold case' review officers.

**17.** In summary, most of the problems Her Majesty's Inspector witnessed stem from what he sees as a serious resource deficiency at Service delivery level. This problem can largely be resolved by energetic and robust management action described earlier in this summary and embodied in the main report. It will call for cultural change chiefly at Police HQ – and a human resource programme which is driven, monitored and held to timescales. (Note: The delivery of this programme is so critical that it will call for independent monitoring/inspection.) There will need to be a robust approach to accountability and a real focus on delivery. Problem solution and not problem identification should become the adopted norm. Only leadership and a rigorous approach of this type will ease the joint frustration of district commanders, front line officers and the public. It is time to get into top gear!<sup>17</sup>

Tom Constantine, under his terms of reference as Oversight Commissioner, has been reviewing the progress made in implementing Patten. His sixth report was published in December 2002 and aimed to provide a more comprehensive overview of progress than his previous reports, covering the period from the autumn of 2001 to December 2002.<sup>18</sup> Its summary explains that:

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<sup>17</sup> *ibid* pp1-3

<sup>18</sup> *Report 6 - December 2002*, Office of the Oversight Commissioner, December 2002:  
<http://www.oversightcommissioner.org/reports/default.asp?page=reports>

In the Overview section the Oversight Commissioner notes a number of specific areas of progress. A major step forward was the establishment of the Policing Board. Since its inception in November of 2001 the Policing Board has been presented, and has effectively dealt with, a number of significant challenges, including changes to the name, badge and uniform of the Police Service. It has committed itself publicly and professionally to its role of ensuring police accountability. The Police Ombudsman has also evolved into an integral and professional component of the policing structure of Northern Ireland. The Police Service deserves credit for having sincerely and diligently undertaken a change process of unprecedented scope and magnitude in policing. The Police Service has successfully established a District Command Unit (DCU) structure, and has appointed a talented and committed group of DCU Commanders. In addition, the Police Service has delivered a successful cross-community recruitment programme that continues to attract large numbers of talented and dedicated young people from across Northern Ireland.

However, the Oversight Commissioner also notes a number of ongoing concerns. These issues have been identified in several of the Oversight Commissioner's previous reports, but remain uncorrected. Certain management practices and delays on the part of the Police Service continue to hold up the full implementation of the Policing with the Community strategy, particularly when combined with increased demands on police resources over the past year. Lack of progress on civilianisation, the management of sick leave, and the internal reassignment of uniformed police officers have all combined to reduce available patrol strength. Other concerns include delays in addressing recommendations on Special Branch, particularly as these relate to the exchange of intelligence information within the Police Service in an effort to combat organised and violent crime. Concerns in the area of training include the lack of a comprehensive Training Needs Analysis, the lack of completed Service Level Agreements with DCU Commanders, the instruction of Police Service employees in new constitutional and legislative arrangements, and human rights, and particularly the construction of a new training facility.<sup>19</sup>

## II Pre-legislative scrutiny

### A. Draft clauses

On 25 November 2002 the Secretary of State for Northern Ireland, Paul Murphy, announced that draft clauses for a Bill on policing in Northern Ireland were being sent to the parties for consultation.<sup>20</sup> The press notice accompanying this announcement said that the proposals would:

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<sup>19</sup> *ibid* p1

<sup>20</sup> see the Secretary of State's written statement, HC Deb 25 November 2002 c2WS

- clarify the respective responsibilities of the Chief Constable of the Police Service of Northern Ireland (PSNI), the Policing Board and Secretary of State in respect of setting policing objectives and the policing plan;
- amend the existing arrangements for the Policing Board to commission reports and initiate inquiries;
- make clear that community policing is at the core of the Police Service of Northern Ireland's functions, by ensuring that all police officers are required to carry out all their duties with the aim of securing the support of, and acting in co-operation with, the local community;
- enable the Chief Constable to second officers from An Garda Síochána to serve in the PSNI with full policing powers; and
- give the Police Ombudsman the power to investigate police practices and policies, in addition to her current power to investigate police complaints.

Further clauses, dealing with issues raised during Jane Kennedy's discussions on legislative and administrative detail, would:

- require the Policing Board to appoint independent members of the District Policing Partnerships with a view to securing that the overall membership of each partnership would be representative of the community it serves;
- give the Board greater flexibility in deciding the frequency and spacing of its public meetings; and
- place a general obligation on the Chief Constable to provide information to the Board.<sup>21</sup>

Alongside the draft clauses the government also issued a 'text for consideration', setting out how it intended to deal with two further points referred to in the revised Implementation Plan. These dealt with the eligibility of ex-prisoners to be considered for appointment to the District Policing Partnerships (DPPs), and the powers of the Belfast DPP sub-groups. The text for consideration is discussed at Part IV below ('Further legislative proposals').

An Opposition Half-Day in the House of Commons on 2 December 2002 provided the opportunity for a debate on policing in Northern Ireland, initiated by the Rev. Ian Paisley.<sup>22</sup> A great deal of this debate focused on the draft clauses and the text for consideration.

## **B. Report of the Northern Ireland Affairs Committee**

The Northern Ireland Affairs Committee of the House of Commons had determined before the publication of draft clauses that it would hold an inquiry on the Bill. However, given the rapid progress from draft clauses to introduction of the Bill in the House of

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<sup>21</sup> 'Policing Review Announcement', *Northern Ireland Office press release*, 25 November 2002

<sup>22</sup> HC Deb 2 December 2002 c627-72

Lords, it had to curtail its plans and confine the observations in its Report<sup>23</sup> to a small number of policy issues. It made clear its dissatisfaction with a ten-day period for pre-legislative scrutiny:

7. The Minister explained to us that the reason for this haste was to obtain Royal Assent for the Bill before Easter, in view of the current political crisis in Northern Ireland and the hope to hold elections there in May. We were told that it was "the declared wish of the parties ... that we should seek to make progress as rapidly as possible and get it dealt with and out of the way."<sup>24</sup>

8. As we have commented elsewhere,<sup>25</sup> although we understand the political imperative to demonstrate progress, token gestures towards consultation and the forced rapid conduct of bills through Parliament are both inherently undesirable. In such cases scrutiny both inside and outside Parliament is rushed and therefore unlikely to be as careful of the details as it should be. We have no doubt that we would have received a significantly greater number of submissions from the public - from whom we would also have wished to take oral evidence in other circumstances - had more time for consultation been allowed.

9. Nor is the process of legislating rapidly sensible or easy from the Government's point of view. When we first spoke to the Minister she confessed to us that, though the Bill had already received its Second Reading in the Lords, there was "some work yet" to be done by the Government on one major clause, "before we finally settle on exactly what form [it] should take".<sup>26</sup> When we returned to this point on our second meeting we were told that the Government had tabled amendments to the clause in question and were awaiting the decision of the Lords on the proposed changes (see also paragraphs 20 - 23 below).

10. There are very few cases in which it is advisable for Governments to pursue legislation at speed. Such legislation is more likely to contain technical errors. Policy decisions may, on reflection, turn out to have been poorly advised. It is for this very reason that the current administration expressed its intention to bring forward more bills in draft; but a ten day scrutiny period really does not suffice.

As it was, the Committee took evidence from Jane Kennedy, the Minister of State for Northern Ireland, and officials from the Northern Ireland Office. It also received submissions from the Committee on the Administration of Justice (CAJ), the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO), Ian Paisley Jnr (a Member of the Legislative Assembly and of the Police Board), and the Northern Ireland Human Rights Commission.

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<sup>23</sup> *The Police (Northern Ireland) Bill*, House of Commons Northern Ireland Affairs Committee, Third Report of Session 2002-03, 28 January 2003 (HC 233)

<sup>24</sup> Minutes of Evidence to the Northern Ireland Affairs Committee, 12 December 2002, Q1

<sup>25</sup> Second Report of the Committee, *Annual Report 2002*, HC 271, 2002-2003

<sup>26</sup> Minutes of Evidence to the Northern Ireland Affairs Committee, 12 December 2002, Q43

The Committee decided that most of the Bill was reasonably uncontroversial from its point of view:

Having discussed the provisions with the Minister we are satisfied that much of the Bill does not require comment on our part.<sup>27</sup>

Its conclusions and recommendations were as follows (the clause numbers relate to the Bill as introduced in the House of Lords: HL Bill 15 of 2002-03):

(a) We agree with the Minister that it is right to demonstrate trust in the Board's authority and ability, by giving it greater freedom to determine the pattern of its work. We welcome the very positive and committed approach to its work taken by the Board to date and urge it to continue in its determination to operate in a demonstrably accountable way (paragraph 12).

(b) We understand the Government's position in affirming the role and authority of the Police Board. In view of the reasonable manner in which the Board has conducted its relationship with the Chief Constable, and given that the safeguard on the timing of reports will remain to protect sensitive investigations, we note the Government's proposal in respect of the disclosure of information (paragraph 19).

(c) We endorse the amendments made at Committee stage in the House of Lords to Clause 11, clarifying the situation in relation to the Ombudsman's powers and retrospection, and substituting a test of public interest for public concern (paragraph 23).

(d) While we entirely understand the Government's intentions in bringing forward Clause 12 we remain concerned that the phrase '*representative of the community*' is open to interpretation and challenge in ways which could run counter to those intentions (paragraph 29).

(e) We believe that it is right that the essential skills for independent members listed in the Code of Practice should be established at an early stage in the appointment process (paragraph 30).

(f) There is in Northern Ireland a particularly urgent need to release more officers for front-line police work (paragraph 32).

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<sup>27</sup> Northern Ireland Affairs Committee Report, para 8

### III The Bill

Legislation on policing in Northern Ireland was announced in the Queen's Speech on 13 November 2002. The *Police (Northern Ireland) Bill 2002/03* (HL Bill 15) was introduced in the House of Lords on 5 December 2002, ten working days after the publication of the draft clauses, and was debated on second reading in the Lords the following week. Its Committee stage was taken off the floor of the House in a Grand Committee of the House of Lords, where no amendments could be forced to a division. The progress of the Bill is charted in Appendix 1 to this Paper. It is the third Bill on policing in Northern Ireland in four years, and the government has said 'it is not meant to be a blockbuster'.<sup>28</sup>

Part 1 of the Bill as introduced in the House of Lords was substantially the same as the draft clauses of 25 November 2002. However, there are clauses in the Bill which were not in the draft clauses, and they deal with:

- funding for pension purposes
- accounts and audits
- police support staff
- intimate samples
- codes of practice.

The Bill underwent some amendment during its passage through the House of Lords. The substantial amendments are addressed below in the commentary on the relevant clauses. In its amended form - Bill 52 - the Bill is due to be debated on second reading in the House of Commons on Monday 10 February 2003. The government's Explanatory Notes to the Bill are published separately as Bill 52-EN.

Reaction to the Bill in House of Lords was mixed but, on the whole, positive. Lord Glentoran, the Conservative spokesman on Northern Ireland, and Lord Smith of Clifton, the spokesman for the Liberal Democrats on Northern Ireland, have both expressed their parties' support for the Bill. Lord Smith drew attention to some delegation of powers,<sup>29</sup> though the House of Lords Committee on Delegated Powers and Regulatory Reform did not find anything it wished to draw to the attention of the House as inappropriate.<sup>30</sup> Lord Glentoran submitted that the vast majority of the Bill was non-contentious, that it was not a Bill entirely for Sinn Fein, and that many parts of it were practical, sensible and good and supported by the Policing Board and the Chief Constable.<sup>31</sup>

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<sup>28</sup> Lord Williams of Mostyn: HL Deb 16 December 2002 c50

<sup>29</sup> HL Deb 16 December 2002 c461

<sup>30</sup> Delegated Powers and Regulatory Reform Select Committee (HL) fifth report on the Police (Northern Ireland) Bill (HL), Public Services (Disruption) Bill (HL), and the Greater London Authority Act 1999 (Repeal) Bill (HL), HL 31 of 2002-03, 18 December 2002, para 7

<sup>31</sup> HL Deb 16 December 2002 c460 and HL Deb 23 January 2003 c861

However, Lord Maginnis of Drumglass (Ken Maginnis, of the Ulster Unionist Party), voiced his ‘overall objection to this dishonourable Bill’.<sup>32</sup> Viscount Brookeborough, a cross-bench peer who is an independent member of the Policing Board for Northern Ireland, was particularly concerned about the possible inclusion in the Bill of the text for consideration.<sup>33</sup>

## **A. Tri-partite relationship: the Board, the Chief Constable and the Secretary of State**

Policing in Northern Ireland, as in England and Wales and in Scotland, is governed by what is known as the “tri-partite structure”. In Northern Ireland the three parties involved are: the Secretary of State for Northern Ireland, the Policing Board and the Chief Constable of the Police Service. The Secretary of State is responsible for setting the statutory framework for policing and the long-term objectives for policing in Northern Ireland. The Policing Board, which is made up of democratically elected Assembly Members chosen by three of the parties and independents appointed by the Secretary of State, has responsibility for holding the police to account and for monitoring and evaluating the service provided. The Chief Constable is responsible for the operational direction and control of the police service in Northern Ireland.

The detailed provisions for this arrangement are set out in the 2000 Act, which was intended to implement the recommendations of the Patten Commission.

One of the stated aims of the current Bill is to adjust the Board’s relationship with the Chief Constable of the Police Service Northern Ireland (PSNI) and the Secretary of State, in particular in respect of setting policing objectives and the policing plan.<sup>34</sup> Some see this as an unwelcome dilution of the powers of the Chief Constable and of his operational independence,<sup>35</sup> whereas others welcome the strengthening of the Board’s role.<sup>36</sup>

### **1. Long-term policing objectives and codes of practice (clause 1)**

Sections 24 and 27 of the 2000 Act require the Secretary of State to consult the Board, the Chief Constable and any other appropriate persons before determining or revising long-term policing objectives, and before issuing or revising codes of practice on the exercise of the functions of the Board or the Chief Constable.

The following long-term objectives for the PSNI were announced on 28 March 2002:

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<sup>32</sup> HL Deb 23 January 2003 c846

<sup>33</sup> HL Deb 16 December 2002 c488

<sup>34</sup> *Updated Implementation Plan*, p8

<sup>35</sup> Lord Glentoran: HL Deb 16 December 2002 c460; Viscount Bridgeman: *ibid* c505

<sup>36</sup> Baroness Goudie (patron of the Community Foundation for Northern Ireland): HL Deb 16 December 2002 c494-6; Lord Smith of Clifton: HL Deb 8 January 2003 c GC10

To build and sustain confidence in the Police Service and police accountability arrangements by all sections of society in Northern Ireland, addressing all the areas set out in legislation and the Implementation Plan; and increasing Catholic representation in the Police.

To work in partnership with other relevant agencies to help reduce the incidence of crime, including organised crime, in line with the Government's published targets; and to diminish the fear of crime.

To uphold and maintain the rule of law, counter the terrorist threat; and bring to justice those responsible for crime.<sup>37</sup>

**Clause 1** of the Bill would amend the existing provisions on consultation to give the Board a slightly enhanced consultative role as compared with the Chief Constable. It would require the Secretary of State to consult the Board *with a view to obtaining its agreement* on any proposed new or revised objectives or code of practice. The arrangements for consulting the Chief Constable and any other persons under sections 24 and 27 of the 2000 Act would not change.

Lord Williams of Mostyn, speaking for the government, confirmed that the amendment would amount to a 'slight change of balance' in favour of the Board.<sup>38</sup> Some peers were not keen on elevating the input of the Board over that of the police themselves, and wondered what had occurred during the last couple of years to make the government think the present arrangement was unsatisfactory.<sup>39</sup>

A series of amendments was tabled in the House of Lords seeking to leave the balance as it is.<sup>40</sup> However, these were all withdrawn.

There was some doubt over what would happen if the Secretary of State was unsuccessful in obtaining the Board's agreement. In a Memorandum of Evidence to the Northern Ireland Affairs Committee dated 5 January 2003, the Northern Ireland Office suggested:

In the event that the Secretary of State was unable to secure the Board's agreement to the determination of the objectives or to a code of practice, it would be a matter for him to proceed. However, we consider such a scenario unlikely as Ministers would wish to make every effort to secure the Board's agreement.<sup>41</sup>

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<sup>37</sup> 'Reid Announces New Policing Objectives', *NIO press release*, 28 March 2002

<sup>38</sup> HL Deb 8 January 2003 c GC7 and 14

<sup>39</sup> see Lord Mayhew of Twysden (Sir Patrick Mayhew, as he then was, was Secretary of State for Northern Ireland from 1992 to 1997): HL Deb 8 January 2003 c GC5

<sup>40</sup> see for example Amendment No. 1 in Grand Committee (Lord Maginnis of Drumglass), HL Deb 8 January 2003 c GC1-10, and Amendment No. 3 (Lord Glentoran), *ibid* cGC11-12

<sup>41</sup> Memorandum submitted to the Northern Ireland Affairs Committee by the Northern Ireland Office, published in the Minutes of Evidence to the Northern Ireland Affairs Committee, Ev 10

Lord Williams of Mostyn confirmed this when declaring an amendment from Lord Rogan unnecessary.<sup>42</sup>

## **2. The Board's policing objectives (clause 2)**

The effect of **clause 2** would be to replace the requirement that the Board's policing objectives be *consistent with* the Secretary of State's long-term policing objectives, with a requirement that the Board should simply *take into account* those long-term objectives when determining or revising its own policy objectives.

## **3. Reports, inquiries and information requested by the Board (clauses 9, 10, 18 and 20-22)**

Section 59 of the 2000 Act requires the Chief Constable to submit a report on any matter connected with the policing of Northern Ireland whenever required to do so by the Board. Once he has done so, the Board may use its powers under section 60 of the 2000 Act to initiate an inquiry into that or any related matter.

However, where the Chief Constable considers that a report or inquiry would contain information which ought not to be disclosed on any of the four grounds currently listed in sections 59 and 60, he may refer the Board's request to the Secretary of State. The Secretary of State can then either delay the proceedings (by agreement with the Board) or modify or set aside the decision of the Board.

When the 2000 Act was going through parliament, several bodies had voiced their concern about this restriction on the Board's power to call for inquiries and reports.<sup>43</sup> However, it does not give the Chief Constable a veto - the final decision rests with the Secretary of State.

The current grounds for non-disclosure are:

- (a) in the interests of national security;
- (b) because [the information or inquiry] relates to an individual and is of a sensitive personal nature;
- (c) because it would, or would be likely to, prejudice proceedings which have been commenced in a court of law; or
- (d) because it would, or would be likely to, prejudice the prevention or detection of crime or the apprehension or prosecution of offenders.

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<sup>42</sup> HL Deb 8 January 2003 c GC12

<sup>43</sup> See the Library Research Paper on the Bill that became the *Police (Northern Ireland) Act 2000* - RP 00/58, pp67-68

**Clause 22** of the Bill would make two substantive amendments to these grounds. Ground (b) would be amended to refer instead to ‘sensitive personnel information’ (in relation to reports) or ‘sensitive personnel matters’ (in relation to inquiries). Both these terms are defined in the new section 76A which clause 22 would insert into the 2000 Act. Ground (d) would be removed and not replaced.

The Patten report had recommended that the grounds for non-disclosure:

should be strictly limited to issues such as those involving national security, sensitive personnel matters and cases before the courts.<sup>44</sup>

The government argued that the amended version would be closer to these recommendations than the existing law is.<sup>45</sup> The Northern Ireland Affairs Committee, however, was concerned that:

the removal of the provision in respect of crime prevention might undermine the PSNI's activity: clearly, the provision was considered helpful at the time when the 2000 Act was being considered, and we were not satisfied that the policing situation had changed substantially in the intervening period.

Similar concerns were voiced in the House of Lords,<sup>46</sup> but Jane Kennedy in her evidence to the Northern Ireland Affairs Committee explained that:

The Board would have to balance considerations of this nature, of whether and when to hold inquiries, with the responsibility they have to maintain an efficient and effective police force in Northern Ireland and clearly any action that they took that would undermine that would run counter to one of their primary responsibilities ... it seemed reasonable to suppose that the Board would not do anything which would prejudice the prevention and detection of crime and therefore to have it in was unnecessary.<sup>47</sup>

However, in response to the level of unease in the House of Lords relating to these changes,<sup>48</sup> the government introduced a series of amendments on third reading.<sup>49</sup>

In relation to reports, the amendments are designed to allow the Chief Constable to supply sensitive information to a small committee of the Board if it ought not to be

<sup>44</sup> *A New Beginning: Policing in Northern Ireland*, para 6.22

<sup>45</sup> Minutes of Evidence to the Northern Ireland Affairs Committee, 12 December 2002, QQ16, 19

<sup>46</sup> see for example HL Deb 8 January 2003 c GC18-19; 9 January 2003 cc GC68-75

<sup>47</sup> Minutes of Evidence to the Northern Ireland Affairs Committee, 12 December 2002, QQ16-17

<sup>48</sup> see for example the debates on what was then clause 19 in Grand Committee: HL Deb 9 January 2003 c GC64-75 and on the then clause 8 on Report: HL Deb 23 January 2003 c854-62. The latter culminated in a division which the government won by 142 votes to 106.

<sup>49</sup> see HL Deb 30 January 2003 c1251 et seq

disclosed on the revised grounds in section 76A, or if disclosure would be likely to put an individual in danger (**clause 9**). Provisions on this special committee are set out in **clause 21**. Alternatively the Chief Constable may choose to supply information of this type to the Board. If the Chief Constable chooses to supply information of this type to the committee, he must provide a summary of it to the Board. Whether information of this type is supplied to the committee or to the Board, the Chief Constable must also tell the Secretary of State that it has been supplied, and tell the recipient that it falls within section 76A, or is likely if disclosed to put an individual in danger.

**Clause 10**, on inquiries, was amended to provide that the Chief Constable may supply sensitive information<sup>50</sup> to the person conducting the inquiry, but he must tell the Secretary of State and the Board that he has done so, and must also alert the person conducting the inquiry that the information is sensitive for one of these reasons.

**Clause 18** would insert a new section into the 2000 Act, requiring the Chief Constable to supply the Board with *such information as the Board may require* for the purposes of, or in connection with, the exercise of any of its functions.<sup>51</sup> Similar provisions in relation to sensitive information are contained in this clause.

In all these cases (reports, inquiries and information), the people who have been supplied with sensitive information would be restricted as to whom they could disclose it (**clause 20**). Disclosing information in contravention of this restriction would be a criminal offence punishable with a fine of up to £5,000.<sup>52</sup>

The government amendments did not, however, seek to reinstate the current fourth ground of referral (where disclosure would affect the prevention or detection of crime, or the apprehension or prosecution of offenders) into primary legislation. The subject was debated at length in the House of Lords,<sup>53</sup> and was described by Lord Williams of Mostyn as possibly the most important aspect of their discussions at that stage.<sup>54</sup> Lord Mayhew of Twysden (Patrick Mayhew, who was Secretary of State for Northern Ireland from 1992 to 1997) commented on the attempts to elicit the reason for the change:

It is important that the reason should be made clear, because suspicion is never far below the surface in Northern Ireland. If the perception is held that there is some undisclosed reason why a provision so recently accorded in government

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<sup>50</sup> information which ought not to be disclosed on the revised grounds, or if disclosure would be likely to put an individual in danger

<sup>51</sup> The clause had originally referred to ‘such information as the Board may reasonably require’. Lord Shutt of Greetland sought to remove the word ‘reasonably’, and Lords Williams of Mostyn promised to consider this: HL Deb 9 January 2003 c GC48-9 As a result, a government amendment to this effect was accepted: HL Deb 23 January 2003 c870

<sup>52</sup> under clause 20(7). This replicates the arrangements that already apply to the police ombudsman under the 1998 Act s63

<sup>53</sup> see for example HL Deb 9 January 2003 c GC64-75, HL Deb 30 January 2003 c1272-6

<sup>54</sup> HL Deb 9 January 2003 c GC68

legislation is being removed two years later, confidence in the arrangements for which the Bill is responsible will be undermined.<sup>55</sup>

Lord Williams of Mostyn emphasised that the flexibility in the 2000 Act to agree to delay publishing a report could mitigate the effect of this change.<sup>56</sup> However, he did concede to a certain extent, announcing that provisions in a new code of practice would cover cases where there was a concern that disclosure would affect the prevention or detection of crime, or the apprehension or prosecution of offenders:

We propose to provide through the code of practice that if the board and the Chief Constable cannot agree in the circumstances which I defined a moment or two ago, and where the Chief Constable's concerns relate to the impact of a particular timescale on the police's ability to prevent or detect crime, the board can refer the matter to Her Majesty's Inspectorate of Constabulary for his advice. The board would be able to take account of the recommendation in finally determining the deadline.<sup>57</sup>

The code of practice would be provided under section 27 of the 2000 Act, which allows the Secretary of State to issue a code of practice for the Board relating to the exercise of any of its functions.

In its revised Patten Implementation Plan, of August 2001, the government committed itself to issuing a best practice code setting out how the Secretary of State would approach proposals from the Policing Board for inquiries. This would include

- consultation of others with an interest, before reaching a judgment;
- the manner in which the Secretary of State might seek further information or give his reasons for refusal; and
- consideration, with the Board, of options short of an inquiry if the Secretary of State is inclined to refuse a Board request.<sup>58</sup>

Both the Committee on the Administration of Justice and the Northern Ireland Association for the Care and Rehabilitation of Offenders have said that they would like to see some independent element to decisions as to whether requests and decisions of the Board genuinely fall within the grounds for non-disclosure.<sup>59</sup> The Patten report had recommended simply that:

If there is a disagreement between the Board and the Chief Constable over whether it is appropriate for a report to be provided on a particular matter, it

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<sup>55</sup> HL Deb 30 January 2003 c1273

<sup>56</sup> *ibid* c GC68-9 and 73

<sup>57</sup> HL Deb 30 January 2003 c1275

<sup>58</sup> *Updated Implementation Plan*, p10

<sup>59</sup> Memoranda to the Northern Ireland Affairs Committee from CAJ and from NIACRO, published as Appendices 1 and 2 to the Committee's Report

should be for the Chief Constable to refer the question to the Secretary of State for a decision as to whether the Board's requirement should stand.<sup>60</sup>

## **B. Northern Ireland Policing Board**

The Northern Ireland Policing Board was set up by the *Police (Northern Ireland) Act 2000*. It replaced the previous Police Authority on 4 November 2001 and is made up of 10 democratically elected Assembly members chosen by parties and 9 independents, appointed by the Secretary of State because of their skills and experience. Sinn Fein has decided not to take part in the Board.

The Board has responsibility for holding the police to account and for monitoring and evaluating the service provided. The Board's duties include:

- ensuring the service's efficiency and effectiveness;
- setting objectives and performance targets for inclusion in an annual policing plan which it publishes;
- monitoring the Chief Constable's performance against the plan;
- monitoring the service's human rights performance;
- keeping itself informed on patterns of recruitment and assessing the effectiveness of the recruitment procedures;
- assessing the effectiveness of the new police code of ethics, which it issues;
- assessing the level of public satisfaction with the police and district policing partnerships;
- requiring the Chief Constable to report to it on any matter connected with policing (and it may then set up an inquiry into grave or exceptional matters);
- setting the police budget;
- appointing senior officers (subject to the Secretary of State's approval);
- making arrangements to secure the economy, efficiency and effectiveness of the Board and police service;
- producing an annual report.

In carrying out its functions the Board is required to have regard both to the policing plan and to the principle that policing should be impartial.

Some comment has been made on the problems of discussing the Board's present and future role given the refusal of Sinn Fein to take part at the moment.<sup>61</sup> However, the Oversight Commissioner is optimistic:

The Policing Board in particular, consisting of elected officials and independent members, and thereby representing the community at large, has had a relatively

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<sup>60</sup> *A New Beginning: Policing in Northern Ireland*, para 6.22

<sup>61</sup> see for example HL Deb 30 January 2003 c1253-5

brief period in which to fulfil the role intended by the Independent Commission. Although the Policing Board has been presented with a myriad of complex and difficult issues in its early stages, it has already demonstrated a strong sense of professionalism and commitment. If the Board continues to operate in such a professional and cooperative manner, and is able to enlist the support of the entire community, it will continue to uphold the crucial principle of holding the Chief Constable and the Police Service publicly to account.<sup>62</sup>

## 1. Public meetings of the Board (clause 3)

The Patten report had recommended public meetings once a month, effectively requiring at least 12 public meetings a year.<sup>63</sup> The 2000 Act came close to this, by requiring that the Board hold at least ten public meetings in any year, with at least 28 days between meetings.<sup>64</sup>

According to Jane Kennedy's evidence to the Northern Ireland Affairs Committee, practice had indicated the benefits of a slightly different approach, which would allow the Board more flexibility in managing its activity.<sup>65</sup> The Board itself had asked for the requirement to be reduced to a minimum of eight meetings a year, with the power to meet more than once in any 28-day period if it wished.<sup>66</sup>

**Clause 3** of the Bill would implement this proposal. The CAJ and NIACRO both raised concerns that such a move would reduce the Board's accountability,<sup>67</sup> and the Minister recognised that such a criticism could be made.<sup>68</sup>

However, the Northern Ireland Affairs Committee accepted the proposal:

We agree with the Minister that it is right to demonstrate trust in the Board's authority and ability, by giving it greater freedom to determine the pattern of its work. We welcome the very positive and committed approach to its work taken by the Board to date and urge it to continue in its determination to operate in a demonstrably accountable way.<sup>69</sup>

Lord Smith of Clifton suggested that the question might have to be revisited if the number of public meetings of the Board did in fact drop to eight a year.<sup>70</sup>

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<sup>62</sup> *Report 6 - December 2002*, Office of the Oversight Commissioner, December 2002, p4  
<http://www.oversightcommissioner.org/reports/default.asp?page=reports>

<sup>63</sup> *A New Beginning: Policing in Northern Ireland*, para 6.36

<sup>64</sup> *Police (Northern Ireland) Act 2000* Sch 1 para 19

<sup>65</sup> Minutes of Evidence to the Northern Ireland Affairs Committee, 12 December 2002, Q12

<sup>66</sup> Northern Ireland Affairs Committee Report, para 10

<sup>67</sup> Memoranda submitted to the Northern Ireland Affairs Committee, Appendices 1 and 2 respectively to the Committee's Report.

<sup>68</sup> Minutes of Evidence to the Northern Ireland Affairs Committee, 12 December 2002, Q13

<sup>69</sup> Northern Ireland Affairs Committee Report, para 12

<sup>70</sup> HL Deb 8 January 2003 c GC17

## 2. Performance Summaries (clauses 7 and 8)

**Clauses 7 and 8** of the Bill might appear to impose a requirement for the Board to produce an additional document. However, the proposal was explained in written evidence from the Northern Ireland Office to the Northern Ireland Affairs Committee:

Clause 6 amends section 28 of the 2000 Act to provide the Board with two options for publishing its assessment of the police performance against efficiency targets. At present, the 2000 Act provides that the Board must publish three documents—

- a policing plan (s.26(1)) (to be published before the start of the financial year to which it refers);
- a performance plan (s.28(4)), (to be audited by the Comptroller Auditor General) which contains efficiency targets for the year ahead and a retrospective summary of performance previous financial year's targets; and
- an annual report (s.57(1)).

Clause 6(2) amends section 28(5)(c) of the 2000 Act so as to remove the current requirement that the retrospective summary of performance against targets ("the performance summary") must form part of the performance plan. Instead, clause 6(3) gives the Board discretion to publish the performance summary either with the annual report, or with the performance plan.

This clause was introduced as a direct request from the Board in the context of the review of policing arrangements. There is no requirement for an additional document. The change would simply give the Board greater flexibility over when to publish the retrospective summary of performance. The argument is that it is more appropriate to publish this with the annual report, which looks back over the previous year, than with the forward-looking performance plan that sets new targets for the year ahead. It would also mean that the performance over the full twelve months of the financial year could then be included.<sup>71</sup>

## 3. Approval of proposals relating to inquiries by the Board (clause 11)

**Clause 11** of the Bill would lower the voting threshold for the Board to cause an inquiry to be held under section 60 of the 2000 Act to follow up a report from the Chief Constable.

It seeks to reduce by two the number of members of the Board who need to be present to validate a vote on whether an inquiry should take place. For the Board as currently constituted, with 19 members, the number would be lowered from ten to eight. However,

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<sup>71</sup> Memorandum submitted to the Northern Ireland Affairs Committee by the Northern Ireland Office, published in the Minutes of Evidence to the Northern Ireland Affairs Committee, Ev 10

the clause would also introduce a new requirement that the proposal must be approved by a majority of those members present and voting.

Under the existing provisions,<sup>72</sup> as ten was the minimum number required for a Board of 19 members, there was no need to specify that this should be a majority of those present and voting. However, since it is proposed to lower the minimum number required from ten to eight, it was felt necessary to include this requirement.<sup>73</sup>

In the debates on the Bill in the House of Lords the new wording seemed to cause some confusion as to whether the proposal had to be approved by a minimum of eight members AND they had to form a majority of those present and voting on that occasion (ie if eight or more members voted *against* the proposal then nine or more members would have to vote in favour);<sup>74</sup> or whether the effect of the amendment would be that eight members had to be present and voting and a majority of these eight (ie at least five members) had to approve the proposal.<sup>75</sup>

The change stems from a commitment made by the government at Weston Park, and has been described as ‘pragmatic rather than theoretical’.<sup>76</sup> The Minister of State, Jane Kennedy, said:

It would seem to me extraordinary that you would not get a very high turnout of Board members for an issue that was of such importance. Just knowing the Board and the way that it has conducted its business over the year, it does not seem to me that it was a problem.<sup>77</sup>

However, the Conservative spokesman Lord Glentoran described it as:

An unwarranted concession designed to make it easier for nationalists to launch inquiries, which, taken with the reduction of the grounds on which the Chief Constable can refer such inquiries to the Secretary of State, should be opposed.<sup>78</sup>

Lord Williams of Mostyn confirmed that the amendment would lower the threshold to get an inquiry:

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<sup>72</sup> *Police (Northern Ireland) Act 2000* Sch 1 para 18

<sup>73</sup> There is already a general rule in *Police (Northern Ireland) Act 2000* Sch 1 para 17(4) that every question at a meeting of the Board shall be determined by a majority of the votes of the members present and voting on the question.

<sup>74</sup> as explained by Lord Glentoran: HL Deb 8 January 2003 c GC21

<sup>75</sup> Viscount Brookeborough: HL Deb 23 January 2003 c866; Lord Glentoran: HL Deb 30 January 2003 c1259

<sup>76</sup> Minutes of Evidence to the Northern Ireland Affairs Committee, 12 December 2002, Q27

<sup>77</sup> Minutes of Evidence to the Northern Ireland Affairs Committee, 12 December 2002, Q26

<sup>78</sup> HL Deb 16 December 2002 c460

The reason for that is plain. Those who see themselves to be in a minority on the board at the moment are concerned that the threshold is too high, because those whom they see as the majority representatives - I stress those words 'they see as' - can simply stay away or abstain to the block the motion.<sup>79</sup>

Amendments were debated at various stages seeking to retain the threshold at 10 members.<sup>80</sup> Lord Maginnis of Drumglass felt that the original measure should be maintained because much of the work of the Board would in any case be done by mutual agreement.<sup>81</sup> Lord Williams simply reiterated what he saw as the safeguards:

Paragraph 18 of Schedule 1 to the 2000 Act states that if the board is considering the inquiry, at least three members of the board have to make a written request. The chairman, no later than three working days after the day on which he receives the request, has to call the meeting. The meeting cannot be held earlier than six days and no later than 21 working days afterwards. It is critically important that the chairman shall notify each member of the board of the date and purpose of the meeting. [...] It still means that a majority of those present and voting must agree before such an inquiry could be called.<sup>82</sup>

The Committee on the Administration of Justice (CAJ), a Northern Irish human rights and civil liberties pressure group,<sup>83</sup> felt that the decision as to weighted voting on inquiries was never sufficiently explained before the passage of the 2000 Act. It did not see the need to lay down such rules in the legislation, and would prefer to see decisions to hold inquiries taken by a simple majority.<sup>84</sup>

Clause 11 would not change the quorum required for a meeting of the Board, which remains at seven for most general purposes.<sup>85</sup>

### **C. District Policing Partnerships**

A District Policing Partnership (DPP) is described as a partnership between the District Council and representatives of the local community, whose purpose is to:

- identify local policing issues
- establish local policing priorities for the local policing plan in conjunction with the police District Commander

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<sup>79</sup> HL Deb 8 January 2003 c GC23

<sup>80</sup> see for example HL Deb 30 January 2003 c1258-62. This culminated in a division which the government won by 122 votes to 100.

<sup>81</sup> HL Deb 30 January 2003 c1259

<sup>82</sup> *ibid* c1261

<sup>83</sup> see <http://www.caj.org.uk>

<sup>84</sup> Memoranda to the Northern Ireland Affairs Committee from the Committee on the Administration of Justice, published as Appendix 1 to the Committee's Report

<sup>85</sup> *Police (Northern Ireland) Act 2000* Sch 1 para 17(1)

- monitor police performance against the policing plan
- develop a practical way of gaining the public's co-operation in working with the police to prevent crime and to protect the public.<sup>86</sup>

The provisions governing the operation and functions of DPPs are set out in Part III of the 2000 Act, and Schedule 3 to that Act contains the current rules on size and composition of DPPs.

Jane Kennedy, Minister of State for Northern Ireland, has stated that DPPs are expected to be set up and holding their first meetings by February 2003.<sup>87</sup>

### 1. Appointing independent members (clause 13)

DPPs are established by each district council, and have 15, 17 or 19 members depending on the decision of the council. They are made up of 'political' members (elected by and from the council and with a political balance reflecting the balance of parties in that council) and 'independent'<sup>88</sup> members (appointed by the Policing Board after nomination by the council). The number of elected members must always be one more than the number of independent members. The only current restrictions are that no member may be a police officer or member of the police support staff, a member of the Board or an employee of the council, and that independent members must not have been convicted of an imprisonable offence.<sup>89</sup>

The Patten report had recommended that:

as with the Policing Board, the independent members should be selected to represent business and trade union interests and to provide expertise in matters pertaining to community safety. Taken as a whole, each DPP should be broadly representative of the district in terms of religion, gender, age and cultural background.<sup>90</sup>

A code of practice on the appointment of independent members of DPPs was published in August 2002 and came into effect immediately.<sup>91</sup> This makes it clear that:

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<sup>86</sup> *Code of Practice on the Exercise of Functions by District Policing Partnerships*, Northern Ireland Policing Board, September 2002: <http://www.nipolicingboard.org.uk/publications/dpp.htm>. See s16 of the 2000 Act.

<sup>87</sup> HC Deb 2 December 2002 c636

<sup>88</sup> This simply means members who are not on the district council - it does not require them to be non-political

<sup>89</sup> *Police (Northern Ireland) Act 2000* Sch 3 para 8

<sup>90</sup> *A New Beginning: Policing in Northern Ireland: The Report of the Independent Commission on Policing in Northern Ireland*, September 1999, para 6.26

<sup>91</sup> *Appointment of independent members to district policing partnerships code of practice* (made under Paragraph 6(2) of Schedule 3 to the Police (Northern Ireland) Act 2000), Northern Ireland Office, August 2002: <http://www.nio.gov.uk/pdf/dpp1.pdf>

Given the section 75 responsibilities of Councils and the Policing Board,<sup>92</sup> they and the consultants should have due regard to the need for independent members to be broadly representative of the district. Care should therefore be taken not to discriminate directly or indirectly against any particular group in the district in the selection criteria.<sup>93</sup>

It adds that:

The impartial assessor appointed to oversee the appointment process should ensure that the panel is representative of the community [...] The Board's panel has a particular responsibility to ensure that the candidates are appointable, and that those selected are representative of the community in the Council area. In doing so, the Board's panel will wish to reflect on the composition of the Council members appointed to the DPP.<sup>94</sup>

The code of practice also sets out a 'model job description and person specification' for independent members, which includes the following eligibility criteria:

**Essential**

- A demonstrable interest in local community, community safety or policing issues.
- Being resident in or otherwise able to demonstrate a close connection with the Council area.

**Desirable**

- The ability to think clearly and exercise sound judgement, experience of taking decisions.
- Experience of working in a team.
- The ability to present information in a clear and logical way and communication skills.
- Experience of working with others and developing and maintaining networks.<sup>95</sup>

**Clause 13** of the Bill seeks to insert into the 2000 Act a requirement that independent members of DPPs should, as far as practicable, be chosen to ensure that the DPP as a whole is broadly representative of the community in the district.

The Northern Ireland Affairs Committee voiced two reasons for concern over this proposal:

It seemed to us that in seeking to protect the interests of minorities in the district the legislation might, by 'setting in stone' the requirement of representation,

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<sup>92</sup> ie. under section 75 of the *Northern Ireland Act 1998* (equal opportunities and equality)

<sup>93</sup> *Appointment of independent members to district policing partnerships code of practice*, Northern Ireland Office, August 2002, para 3.3 (a)

<sup>94</sup> *ibid* para 3.3 (e)

<sup>95</sup> *ibid*, Annex iii

reinforce the position of whichever culture or community prevailed in that area. It also appeared that such prescription might increase the political sensitivity of the appointments process, at the expense of securing those best equipped, in terms of skills, to carry out the DPP's work. [...]

The Minister insisted that the purpose of making the provision was to enable the Board to seek a balance where elected members of the DPP might, in some ways, appear not to be wholly representative of the community.<sup>96</sup> She also pointed to the requirement placed on the Board to act "so far as is practicable" in appointing to ensure representation, as providing a safeguard and flexibility where the task proved particularly difficult.

**While we entirely understand the Government's intentions in bringing forward Clause 12 we remain concerned that the phrase "*representative of the community*" is open to interpretation and challenge in ways which could run counter to those intentions.** It may be that guidance on this point is preferable to legislation which must, of necessity, be couched in such imprecise terms.<sup>97</sup>

Lord Shutt of Greetland sought to clarify the term 'representative of the community' by adding 'including in terms of gender and ethnicity' to the clause. In rejecting such an amendment, Lord Williams of Mosyn suggested that the code of practice<sup>98</sup> will determine those appointments, and that 'representative' should extend to religion, disability, age and cultural background as well as gender and ethnicity.<sup>99</sup>

## 2. Disqualification (clause 14)

The Bill's amendment on disqualification from membership of a DPP is commented on in the government's Explanatory Notes to the Bill:

Paragraph 7(1) of Schedule 3 of the 2000 Act sets out various circumstances in which the Board, or a district council with the Board's approval, may remove a person from office as a member of a DPP (e.g. conviction of a criminal offence; bankruptcy). Clause 14 amends paragraph 8 of Schedule 3 to the 2000 Act to provide that someone removed from a DPP under paragraph 7(1) is disqualified from reappointment until the next local general election. This is a new disqualification which brings the arrangement for DPP membership in line with that already in place for membership of the Board.<sup>100</sup>

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<sup>96</sup> Minutes of Evidence to the Northern Ireland Affairs Committee, 12 December 2002, Q38

<sup>97</sup> Northern Ireland Affairs Committee Report, paras 26-29

<sup>98</sup> presumably referring to *Appointment of independent members to district policing partnerships code of practice*, Northern Ireland Office, August 2002

<sup>99</sup> HL Deb 8 January 2003 c GC35-6

<sup>100</sup> Bill 52-EN para 37

The Patten report did not make any recommendation that former prisoners should or should not serve as independent members on a DPP.

An amendment debated in the House of Lords sought to ensure that an independent member removed from a DPP for failing to disclose a criminal conviction is disqualified from reappointment for three years instead of until the next local general election (or permanently if his failure to make the disclosure about his criminal convictions was intentional). But Lord Williams of Mostyn suggested the current wording was preferable as it introduced an equivalence between members of the DPP and members of the Board, adding that the code of practice on the appointment of independent members of the DPP<sup>101</sup> already instructs the Board to consider whether failure to disclose a conviction should rule out an applicant.<sup>102</sup>

## D. The Ombudsman

Part VII of the *Police (Northern Ireland) Act 1998* provided for the creation of a Police Ombudsman for Northern Ireland, as recommended by a 1997 review of the police complaints system in Northern Ireland.<sup>103</sup> Mrs Nuala O'Loan was appointed as Ombudsman in October 1999,<sup>104</sup> and the office began operating in November 2000. The role of the Ombudsman's office is described on its website as follows:<sup>105</sup>

We provide an independent, impartial police complaints system for the people and police under the Police (Northern Ireland) Act 1998 and 2000. You do not have to pay to complain to us.

- We deal with complaints about how police do their jobs, and look at whether these complaints follow any patterns or trends. Although the word 'police' is in our title, it is there simply to identify the people we investigate. We are entirely independent of the police.
- We will investigate complaints about how the police behave when they are doing their job. Complaints may involve allegations of criminal behaviour by a police officer, or allegations that a police officer broke the police code of conduct.
- When we receive your complaint, we will consider it and decide how to deal with it.
- Even if you have not made a complaint, we can investigate a matter if we have reason to think that a police officer may have committed a criminal offence or broken the police code of conduct. We can also investigate a

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<sup>101</sup> *Appointment of independent members to district policing partnerships code of practice*, Northern Ireland Office, August 2002

<sup>102</sup> HL Deb 8 January 2003 c GC37-8

<sup>103</sup> Dr Maurice Hayes, *A Police Ombudsman for Northern Ireland?* Northern Ireland Office, January 1997

<sup>104</sup> 'Appointment of Police Ombudsman', *Northern Ireland Office press notice*, 11 October 1999.

<sup>105</sup> <http://www.policeombudsman.org/main/mission.htm>

matter if the Secretary of State, the Chief Constable or the Policing Board asks us to.

- We also monitor complaints against the police and check whether the complaints follow any trends or patterns.

### **The Police Ombudsman also reports on her work**

- The Police Ombudsman produces an Annual Report which refers to the complaints she has dealt with during the previous year.
- The Police Ombudsman can write a report on anything she thinks the Secretary of State should know about, in the public interest.
- The Police Ombudsman will carry out any necessary research or report on any matter as asked by the Secretary of State.
- The Police Ombudsman will put before Parliament and publish any report to the Secretary of State.
- The Police Ombudsman will send a copy of her reports to the Chief Constable and to the Policing Board.
- The Police Ombudsman will supply the Policing Board with any statistics she believes it should receive.

### **What the Police Ombudsman cannot do**

- Investigate an officer's conduct that has already led to criminal or disciplinary action, unless there is new evidence that was not available at the time of the original investigation.
- Investigate complaints that are 'out of time' (see step 2 on page 'how to complain').
- Investigate complaints about an off-duty officer, unless the fact that he or she is a police officer is relevant to the complaint.
- Investigate complaints about traffic wardens or other civilian employees of the police.
- Investigate complaints about police policy. We will, however, monitor any trends in these complaints

## **1. Powers (clause 12)**

The powers and duties of the Ombudsman are currently set out in Part VII of the *Police (Northern Ireland) Act 1998*, as amended by the 2000 Act. Section 61A of the 1998 Act<sup>106</sup> currently provides that:

(1) The Ombudsman may make to the Chief Constable and the Board a report on any matters concerning the practices and policies of the police which -

(a) come to the Ombudsman's attention under this Part; and

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<sup>106</sup> itself inserted by s63 of the 2000 Act

(b) should, in the opinion of the Ombudsman, be drawn to the attention of the Chief Constable and the Board.

- (2) The Ombudsman may carry out research into any matter which may be the subject of a report under subsection (1).

**Clause 12** of the Bill would replace this clause with a new section 60A for the 1998 Act. The new section would be based on a ‘public interest’ test, enabling the Ombudsman to investigate a *current* practice or policy of the police that has come to his attention if ‘he has reason to believe that it would be *in the public interest* to investigate the practice or policy’. The Patten report had said simply that:

the Ombudsman should exercise the right to investigate and comment on police policies and practices, where these are perceived to give rise to difficulties.<sup>107</sup>

The Bill as introduced in the House of Lords<sup>108</sup> had been criticised for opening up the possibility of retrospective investigations by the Ombudsman, and for appearing to limit her powers to report.<sup>109</sup> The government therefore submitted amendments in the House of Lords which added the word ‘current’, and replaced the words ‘of significant public concern’ with ‘in the public interest’.<sup>110</sup> The first amendment was intended to make explicit that the new power was not retrospective; and the government’s explanation for the second was summarised by the Northern Ireland Affairs Committee:

Firstly, it was explained to the House of Lords that the new wording would avoid any pressure on the Ombudsman to investigate where there might be "a whipped-up rather synthetic agitation based sometimes on misapprehension or sometimes on plain untruths which would generate significant public concern". Secondly it would allow the Ombudsman to investigate acts of wrongdoing which had been concealed from the public eye and could not, therefore, be described as subjects of public concern.<sup>111</sup>

Lord Williams of Mostyn explained further during the course of the debate on the amendments:

The Ombudsman has to make judgments on public interest questions in the context of her other functions, not least, for instance, in deciding which information should be made public, if any. If her decision on what is in the public

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<sup>107</sup> *A New Beginning: Policing in Northern Ireland: The Report of the Independent Commission on Policing in Northern Ireland*, September 1999, para 6.41

<sup>108</sup> HL Bill 15, clause 11

<sup>109</sup> for example Baroness Goudie: HL Deb 16 December 2002 c496-7; Viscount Brookeborough: *ibid* c500. See also Memoranda to the Northern Ireland Affairs Committee from NIACRO and from Ian Paisley Jnr, published as Appendices 2 and 3 to the Committee’s Report.

<sup>110</sup> Debated in Grand Committee in the House of Lords: HL Deb 8 January 2003 cc GC25-32

<sup>111</sup> Northern Ireland Affairs Committee Report, para 23

interest is irrational, she is subject to the control of the court through judicial review.<sup>112</sup>

A further government amendment was introduced in Grand Committee to clarify that the Ombudsman should not stray into areas which are within the remit of a tribunal established under the *Regulation of Investigatory Powers Act 2000*.<sup>113</sup>

Lord Glentoran wanted the Ombudsman to be required to give the Secretary of State the reasons behind a decision to conduct an investigation.<sup>114</sup> The government accepted the principle of this and introduced an amendment on third reading to this effect.<sup>115</sup>

In the revised Patten Implementation Plan, the government set out its intention to amend the police conduct regulations so that obstruction of an Ombudsman's investigation is a disciplinary offence.<sup>116</sup>

## 2. Obtaining information and documents (clause 12(4))

Section 66 of the 2000 Act provides that the Chief Constable and the Board shall supply the Ombudsman with such information and documents as he may require for the purpose of exercising his functions. **Clause 12(4)** would insert new subsections (2) to (4) into section 66. These require the Chief Constable, or the Board, if supplying any sensitive information to the Ombudsman, to identify it as such to the Secretary of State and the Ombudsman, and to notify the Secretary of State that it has been passed to the Ombudsman.<sup>117</sup>

The Bill had originally provided that the Chief Constable or the Board could refer to the Secretary of State a request from the Ombudsman for information or documents if they thought it would mean disclosing sensitive information. The Chief Constable could then have modified or set aside the requirement for the Chief Constable or the Board to provide the information.

But following the concerns raised on both sides of the community about maintaining the independence of the Ombudsman from political interference, the government announced on second reading that it would introduce amendments to remove the barrier to the Ombudsman's access to information but retain existing legislative safeguards (in section

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<sup>112</sup> HL Deb 8 January 2003 c GC31

<sup>113</sup> debated at HL Deb 8 January 2003 c GC31-3

<sup>114</sup> HL Deb 23 January 2003 c870

<sup>115</sup> HL Deb 30 January 2003 c1263-4

<sup>116</sup> *Updated Implementation Plan*, p11

<sup>117</sup> Sensitive information is that of a kind listed in the new s66(4) of the 2000 Act as inserted by clause 12(4) of the Bill - ie. information which, if disclosed, would be likely to put an individual in danger, or which falls into one of the grounds for non-disclosure in the new s76A(1) of the 2000 Act.

63 of the 1998 Act) relating to inappropriate public disclosure.<sup>118</sup> Amendments to this effect were added to the Bill in Grand Committee.<sup>119</sup>

## **E. Police support staff**

**Part 2** of the Bill, along with **Schedules 1 and 2**, is mainly concerned with increasing the powers and duties available to police support staff, who may be designated as investigating officers, detention officers or escort officers. These proposals mirror to a certain extent the provisions of the *Police Reform Act 2002* relating to civilian staff in England and Wales, and are described in full in the government's Explanatory Notes to the Bill.<sup>120</sup>

The Liberal Democrat peer Baroness Harris of Richmond said that these provisions were the major concern relating to the Bill on her side of the House, and that it was far too early to be rushing to adopt a similar approach in Northern Ireland, before the effect of the equivalent changes in England and Wales had been properly evaluated.<sup>121</sup>

### **1. Recruitment**

The Northern Ireland Affairs Committee felt that it was particularly important for civilian staff to be given more responsibilities in Northern Ireland, in order to release more officers for front-line police work.<sup>122</sup> However, it highlighted concerns over the difficulties of recruiting civilian staff on a 50:50 basis between the communities. Under sections 44 and 46 of the 2000 Act, where there is a recruitment competition for six or more civilian vacancies at the same level, an equal number of Roman Catholics and those who are not Roman Catholics should be appointed from the pool of candidates who qualify on merit. The need for this measure will be reviewed by the government on a triennial basis,<sup>123</sup> and is an issue to which the Committee said it would return at a later date.<sup>124</sup>

The Chief Constable is reported as referring to a recent competition for administrative staff, in which only 26 Catholics were successful - less than 10% of the total number of successful candidates - meaning that only 52 staff in total could be appointed.<sup>125</sup> However, since the date of that competition,<sup>126</sup> a contractor (Grafton) has been appointed to oversee

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<sup>118</sup> Lord Williams of Mostyn, HL Deb 16 December 2002 c455

<sup>119</sup> HL Deb 8 January 2003 c GC32-3, 35

<sup>120</sup> Bill 52-EN, paras 49-87

<sup>121</sup> HL Deb 16 December 2002 c483

<sup>122</sup> Northern Ireland Affairs Committee Report on the Bill, para 32

<sup>123</sup> *Police (Northern Ireland) Act 2000* s47. The first such review is due in early 2004.

<sup>124</sup> Northern Ireland Affairs Committee Report on the Bill, para 33

<sup>125</sup> 'Suspend 50/50 rule or recruitment ends', *Irish News*, 10 December 2002

<sup>126</sup> see HL Deb 23 January 2003 c877-8

civilian recruitment, and is required to take into account the recommendations of the Patten report.<sup>127</sup>

Lord Williams of Mostyn gave the following statistics in answer to a recent parliamentary question:

Since 4 November 2001, 23 competitions have been run for civilian support staff posts in the Police Service of Northern Ireland; the 50:50 recruitment arrangements, effected by section 46(5) of the Police (Northern Ireland) Act 2000, did not apply to the majority of these.

These competitions attracted a total of 2,876 applicants, comprising 674 Roman Catholics and 2,202 non-Roman Catholics. To date they have resulted in 70 appointments, comprising 31 Roman Catholics and 39 non-Roman Catholics, and further appointments are expected.<sup>128</sup>

The Oversight Commissioner, in his sixth report, identified lack of progress on civilianisation as one of the factors in the problems over available patrol strength, others being the management of sick leave, the pace of severance, security responsibilities and the internal reassignment of uniformed police officers.<sup>129</sup> However, he suggested that concerns over patrol strength might be disproportionate:

It has also been publicly reported that patrol strength is a concern, however this concern should be seen against actual projections made by the Independent Commission. These were that, following a low of just over 7,100 police officers in 2002/2003, police numbers would stabilise at around 7,500.<sup>130</sup>

As of 30 September 2002, the Police Service had approximately 6,970 regular police officers, and approximately 1,970 members of the Full Time Reserve, making a total of 8,940 officers available for duty.<sup>131</sup> The Patten Commission had projected that in Year 3 of its calculations, in other words by 2002/2003, there would be 7,116 regular police officers available for duty. Patten also projected that the Full Time Reserve would have been phased out by Year 3, but this has not yet happened.

Quite some time was spent debating the 50:50 requirements for police and support staff in Grand Committee in the House of Lords on 9 January 2003,<sup>132</sup> and again on report<sup>133</sup> and

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<sup>127</sup> *Report 6 - December 2002*, Office of the Oversight Commissioner, December 2002

<sup>128</sup> HL Deb 13 January 2003 c WA3

<sup>129</sup> *Report 6 - December 2002*, Office of the Oversight Commissioner, December 2002, pp14-15: <http://www.oversightcommissioner.org/reports/default.asp?page=reports>

<sup>130</sup> *Report 6 - December 2002*, Office of the Oversight Commissioner, December 2002, p17

<sup>131</sup> *Report 6 - December 2002*, Office of the Oversight Commissioner, December 2002, p118

<sup>132</sup> HL Deb 9 January 2003 c GC52-64

<sup>133</sup> HL Deb 23 January 2003 c871-8 and 894-5

third reading.<sup>134</sup> Lord Williams of Mostyn emphasised that under the 2000 Act the Secretary of State may (after consulting the Board and the Chief Constable) make an order adjusting the 50:50 quota if the required number of police or support staff trainees could not otherwise be appointed. In the context of the current skills shortage, he undertook to give serious consideration to any proposal from the Board on a limited change to the 50:50 provisions in respect of experienced officers at constable level.<sup>135</sup>

## 2. Contracted-out support staff (clause 24)

The provisions of the Bill on designated contracted-out staff were introduced as government amendments at Report stage in the House of Lords, and accepted without debate.<sup>136</sup> This apparently followed requests from the Chief Constable to allow the police to enter into contracts with the private sector for the provision of services relating to the detention or escort of people in custody. **Clause 24** would allow the Chief Constable to designate an employee of a contractor, either as a detention officer or an escort officer (but not as an investigating officer). These employees would then have the same powers and duties as police support staff who were detention officers or escort officers, including the entitlement to use reasonable force.

**Clause 4** was intended to put it beyond doubt that the powers of the Board include entering into a contract for the provision of detention and escort services.<sup>137</sup> In this context, concerns were raised over whether national security considerations could enter into the tender decisions. Lord Williams of Mostyn replied saying that:

There are already safeguards in place to ensure that contractors taking on work in sensitive areas are appropriately screened. [...] Clause 21(3)(d) of the Bill already makes it clear that the Chief Constable can only designate a person under this section only if he is satisfied that [...] ‘the contractor is a fit and proper person to supervise the carrying out of the functions for the purposes of which the person is to be designated’. [...] the Secretary of State can now issue a certificate that his decision to refuse a tender was made on grounds of national security, public order and/or public safety and that the decision was justified.<sup>138</sup>

It is not clear on the face of the Bill whether the 50:50 quota arrangements would apply to contracted-out support staff as they do to police support staff.

## 3. Complaints and conduct (clauses 27-30)

These clauses were inserted when the Bill was debated on report on 23 January 2003.

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<sup>134</sup> HL Deb 30 January 2003 c1266-70

<sup>135</sup> *ibid* c GC62-3

<sup>136</sup> HL Deb 23 January 2003 c896

<sup>137</sup> HL Deb 30 January 2003 c1249

<sup>138</sup> *ibid* c1251

**Clause 27** would give the ombudsman power to deal with complaints against designated support staff, including contracted-out staff, and would come into force once the appropriate regulations are brought forward.<sup>139</sup> Lord Williams of Mostyn explained that this would mirror the new complaints system for England and Wales under the *Police Reform Act 2002*, which is due to come into force in April 2004.<sup>140</sup>

**Clause 28, 29 and 30** are intended to apply provisions on liability for unlawful conduct, notification of membership of certain organisations, and application of the code of ethics to designated police support staff, including contracted-out staff, who would be exercising limited police powers.

#### 4. Powers (clauses 33 and 34)

When the Bill was debated on second reading in the House of Lords, the Liberal Democrat peer Baroness Harris of Richmond was concerned that a provision in Schedule 1 to the Bill would have the effect of allowing civilian detention officers to conduct intimate searches.<sup>141</sup> This provision was removed on report,<sup>142</sup> following government commitments in Grand Committee,<sup>143</sup> and a new clause inserted instead. This now appears as **clause 34** of the Bill alongside **clause 35** on intimate samples. Lord Williams of Mostyn explained the government's position:

Article 56(5) of the Police and Criminal Evidence (Northern Ireland) Order 1989 sets out that an intimate search (other than one which is only a drug offence search) must be carried out either by a medical practitioner or a nurse registered as such under the Nurses, Midwives and Health Visitors Act 1997 unless an officer of at least the rank of superintendent concludes that that is not practicable.

Article 56(6) states that if it is not practicable it shall be carried out by a constable. In either case the search has to be carried out by a person of the same sex as the person being searched. It is not the intention of the Bill to change those roles but to increase the powers of the nurses and doctors concerned. Nurses and doctors at the moment cannot call on constabulary powers where the use of reasonable force would be appropriate. Therefore, they are vulnerable to accusations of assault if carrying out an intimate search.<sup>144</sup>

**Clause 34** therefore does not alter the definition of who may carry out an intimate search, but provides that a person doing so under the existing rules may use reasonable force if necessary.

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<sup>139</sup> HL Deb 30 January 2003 c1264

<sup>140</sup> HL Deb 23 January 2003 c902

<sup>141</sup> HL Bill 15 Schedule 1 Part 2 para 13 - see HL Deb 16 December 2002 c483

<sup>142</sup> see HL Deb 23 January 2003 c900, c905

<sup>143</sup> see the debate on 9 January 2003 c GC77-8

<sup>144</sup> HL Deb 9 January 2003 c GC77

**Schedule 2** to the Bill would make various consequential amendments to the *Police and Criminal Evidence (Northern Ireland) Order 1989*.<sup>145</sup> For instance paragraphs 3 and 6 would remove the provisions which enable the Chief Constable to designate persons to carry out a search for an identifying mark or to photograph detainees, as Schedule 1 to the Bill gives wider powers to confer such responsibilities on designated support staff.<sup>146</sup>

## **F. Other matters**

### **1. Core policing principles (clause 16)**

The Patten report recommended that ‘policing with the community should be the core function of the police service and the core function of every police station.’<sup>147</sup> The 2000 Act did not state this explicitly, though it does require that police officers shall be guided by the code of ethics and shall, so far as practicable, carry out their functions in co-operation with, and with the aim of securing the support of, the local community.<sup>148</sup>

**Clause 16** would introduce the concept of policing with the community as a ‘core policing principle’ for all police officers. The requirement to be guided by the code of ethics under section 52 of the 2000 Act is also elevated to a core policing principle. This code of ethics will apparently be published by the Board in the near future.<sup>149</sup>

Some organisations would also have liked to see the protection of human rights identified as a core policing principle under this clause.<sup>150</sup> Lord Shutt of Greetland suggested this as an amendment in Grand Committee in the House of Lords on 8 January 2003.<sup>151</sup> However, Lord Williams of Mostyn, replying for the government, stated that human rights were amply protected through other mechanisms:

I sympathise entirely with the thinking behind this and I hope I can reassure the noble Lord and the Committee that because of the Human Rights Act 1998, all police officers are obliged to act compatibly with the European Convention on Human Rights. The clause makes it clear that the code of ethics is the guide for all police officers, which they must attend to. That code is fully compatible with the ECHR and other international human rights standards. Apart from that, the board has a duty under Section 3(3)(b) of the 2000 Act to monitor the performance of the police in complying with the Human Rights Act and under Section 3(3)(d)(iv) to assess the effectiveness of the code of ethics. Therefore,

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<sup>145</sup> SI 1989/1341 (N.I. 12)

<sup>146</sup> Memorandum to the Northern Ireland Affairs Committee by the Northern Ireland Office, published in the Minutes of Evidence to the Northern Ireland Affairs Committee, Ev 9

<sup>147</sup> *A New Beginning: Policing in Northern Ireland: The Report of the Independent Commission on Policing in Northern Ireland*, September 1999, para 7.9

<sup>148</sup> *Police (Northern Ireland) Act 2000* s32(4) and (5)

<sup>149</sup> HL Deb 23 January 2003 c904

<sup>150</sup> see for example the Memoranda to the Northern Ireland Affairs Committee from CAJ and from the Human Rights Commission, published as Appendices 1 and 4 to the Committee’s Report

<sup>151</sup> HL Deb 8 January 2003 c GC46

one has here a deeply ingrained human rights protection and, on the basis of those assurances, I hope the noble Lord will not press his amendment.<sup>152</sup>

Lord Shutt duly withdrew his amendment, but still felt that it would be useful to have such a provision on the face of the Bill.<sup>153</sup> The government's intention to have a human rights based approach to policing is set out in the updated Patten implementation plan.<sup>154</sup>

## 2. Fixed term appointments to the PSNI (clause 19)

Under **Clause 19** fixed term appointments to the PSNI of up to three years would become possible for a wider range of officers. According to an official from the Northern Ireland Office, this is partly to implement another Patten recommendation that officers from An Garda Síochána or other police forces to be seconded to the PSNI.<sup>155</sup>

Currently, fixed-term appointments are available only for officers of superintendent rank or above.<sup>156</sup> This amendment would extend this to officers between the ranks of constable and senior officer<sup>157</sup> - in other words, sergeants, inspectors, chief inspectors, superintendents and chief superintendents.<sup>158</sup>

Lord Maginnis of Drumglass raised the question of whether this clause was designed to avoid the 50:50 criterion for those brought in on secondment.<sup>159</sup> Lord Williams of Mostyn replied that the 50:50 criteria applies only to the recruitment of constables, and the Chief Constable could not use the power under this clause to appoint anyone as a constable (or as a senior officer).<sup>160</sup>

The British and Irish governments recently signed an agreement on police co-operation which committed them both to enable members of the Garda Síochána to apply for posts at ranks of above Inspector level in the PSNI, and vice versa, and to enable secondments between the Garda Síochána and the PSNI.<sup>161</sup>

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<sup>152</sup> *ibid*

<sup>153</sup> *ibid*

<sup>154</sup> *Updated Implementation Plan*, pp1-4

<sup>155</sup> Minutes of Evidence to the Northern Ireland Affairs Committee, 12 December 2002, Q41

<sup>156</sup> *Police (Northern Ireland) Act 1998* s25(6)

<sup>157</sup> 'Senior officers' are those of the rank of Assistant Chief Constable and above, who are appointed by the Policing Board (subject to the approval of the Secretary of State) rather than by the Chief Constable

<sup>158</sup> Minutes of Evidence to the Northern Ireland Affairs Committee, 12 December 2002, Q41

<sup>159</sup> HL Deb 9 January 2003 c GC51

<sup>160</sup> *ibid* c GC52

<sup>161</sup> *Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland on Police Co-operation*, 29 April 2002:  
<http://www.nio.gov.uk/press/igree.doc>

### 3. Codes of practice (clause 36)

The *Police and Criminal Evidence (Northern Ireland) Order 1989*<sup>162</sup> is the Northern Ireland equivalent of the *Police and Criminal Evidence Act 1984* which applies to England and Wales. As with the 1984 Act, it is supplemented by a series of codes of practice on policing and evidence matters.

**Clause 36** of the Bill would allow the Secretary of State to vary the effect of a code of practice, either in a particular area, for a limited length of time, or for certain types of offence or offender. Such provisions are usually intended to allow for matters to be tested on a trial basis before being introduced as a permanent and general feature,<sup>163</sup> but the Explanatory Notes do not indicate whether that is the government's intention here.

### 4. Police pensions (clause 5)

The intended effect of the series of amendments contained in **clause 5** of the Bill is set out in the government's Explanatory Notes to the Bill:

This clause amends sections 9, 10, 27 and 77 of the 2000 Act. The object of the amendment is to split off funding which relates to the Police Service of Northern Ireland Pension Scheme from other Board funding. This is a necessary first step if the Board is to be required to draw up separate accounts for pension funding, and for other police funding. If separate pension funding accounts are prepared, the requirements of the new accounting standard FRS 17 *Retirement Benefits* (which oblige pension scheme accounts to set out in full the scheme's assets and liabilities) will apply only to these, and not to the accounts relating to general police funding. The objective is to prevent the detail required by FRS 17 from overshadowing and drawing attention away from the record of the police's core financial performance.<sup>164</sup>

Lord Shutt of Greetland expressed his concern that this might lead to a total de-linking of the finances of the Policing Board and of pensions, which he felt ought to be examined together.<sup>165</sup>

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<sup>162</sup> SI 1989/1341 (N.I. 12)

<sup>163</sup> see for example clause 7 of the *Criminal Justice Bill 2002-03* which relates to Codes of Practice in England and Wales

<sup>164</sup> Bill 52-EN, para 10

<sup>165</sup> HL Deb 16 December 2002 c503-4

## IV Further legislative proposals

On 25 November 2002 the government also published a second series of draft clauses under the heading of a 'text for consideration'. The proposals in this text followed undertakings given by the British and Irish governments at the Weston Park talks in July 2001. The government's intention in publishing was apparently not to express a firm intention to add these clauses to the current Bill, but rather to reveal its thinking on the issues and its readiness to legislate if it became appropriate to do so. The issues included in the text for consideration are:

- allowing individuals who have a criminal conviction, and who have undergone a period of imprisonment, to be eligible for the post of independent member of a DPP after a five-year disqualification period following their discharge in respect of the offence (convicted persons are not currently disqualified from being 'political' members of a DPP);
- the requirement that independent members of the DPPs should make a declaration against terrorism; and
- provision that the DPP for Belfast should be able to set up sub-groups for each police district.

The Northern Ireland Affairs Committee took evidence on these proposals from the Northern Ireland Minister Jane Kennedy on 12 December 2002 and 9 January 2003:

49. We were grateful for the Minister's confirmation that such a bill would only be brought forward in:

"...a situation where the political partners in Northern Ireland can regain confidence that those who are engaged in the partnership in Northern Ireland, in power sharing, are genuinely and absolutely and irrevocably committed to a democratic approach and have permanently put aside violence as a means of achieving their ends ... we have made it very clear that the ball is in the court of the Republicans. They are the ones who have to demonstrate their *bona fides* in this ... However, obviously, what we are seeking to do is to create circumstances in which they also have confidence that we mean what we say and that their partners in power sharing are serious, if that were to happen, that the power sharing would continue and everybody would be committed to it."<sup>166</sup>

On her second appearance, the Minister told us that she was "neither more nor less" confident of this situation being reached than she had been a month previously.<sup>167</sup>

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<sup>166</sup> Minutes of Evidence to the Northern Ireland Affairs Committee, 12 December 2002, Q4

<sup>167</sup> Minutes of Evidence to the Northern Ireland Affairs Committee, 9 January 2002, Q106

There was much discussion of the proposals in the text for consideration during the debate on the second reading of the Bill in the House of Lords on 16 December 2002.<sup>168</sup> The Liberal Democrat spokesman Lord Smith of Clifton suggested that:

the essence of the Bill - its real significance - lies in the 'text for consideration'

which he suggested was an inducement to Sinn Fein and the IRA to renounce violence and intimidation for ever.<sup>169</sup> Lord Maginnis of Drumglass, also said that

we must consider this Bill in terms of what it heralds rather than what it appears to be.<sup>170</sup>

Lord Glentoran, speaking for the Conservatives, said that

we do not rule out those changes for all time but we are emphatically opposed to them before we have had evidence of what the Government call 'acts of completion'. In our view, 'acts of completion' has to include both decommissioning and disbandment by a paramilitary organisation. Until such time as that happens it would, in our view, be wholly wrong for former terrorist prisoners to be put into positions whereby they can sit in judgment on the police.

The inclusion of those clauses would almost certainly have caused my party to advise against giving the Bill a Second Reading; we would not have supported it.<sup>171</sup>

Lord Williams of Mostyn confirmed that the government had concluded that the time was not yet right to make these changes. They would be considered 'only in the context of acts of completion on the part of all paramilitaries'.<sup>172</sup> However, at a later stage in the debates he said that he could not rule out the possibility of these clauses being introduced to the current Bill at some stage, if the conditions were right to do so.<sup>173</sup>

The phrase 'acts of completion' was the one used by the Prime Minister, who explained it as meaning:

Not merely a statement, a declaration of words. It means giving up violence completely in a way that satisfies everyone and gives them the confidence that the IRA has ceased its campaign, and enables us to move the democratic process

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<sup>168</sup> see for example Lord Smith of Clifton (c461 ff)

<sup>169</sup> HL Deb 16 December 2002 c462

<sup>170</sup> HL Deb 16 December 2002 c485

<sup>171</sup> HL Deb 16 December 2002 c461

<sup>172</sup> HL Deb 16 December 2002 c456

<sup>173</sup> HL Deb 8 January 2003 c GC7

forward, with every party that wants to be in government abiding by the same democratic rules.<sup>174</sup>

The House of Commons debated the proposals indirectly, during the Opposition Half-Day Debate on 2 December 2002 on policing in Northern Ireland.<sup>175</sup>

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<sup>174</sup> HC Deb 27 November 2002 c309

<sup>175</sup> HC Deb 2 December 2002 c627-72

## Appendix 1 - Glossary

**PSNI:** Police Service of Northern Ireland.

**The Board:** Policing Board for Northern Ireland.

**DPP:** District Policing Partnership.

**1998 Act:** *Police (Northern Ireland) Act 1998*

**2000 Act:** *Police (Northern Ireland) Act 2000*

**1989 Order:** *Police and Criminal Evidence (Northern Ireland) Order 1989* (SI 1989/1341) (N.I. 12)

**Patten report:** Report of the Independent Commission on Policing for Northern Ireland, *A New Beginning: Policing in Northern Ireland*, September 1999.

**Updated implementation plan:** *The Community and the Police Service: Report of the Independent Commission on Policing for Northern Ireland: Updated Implementation Plan*, Northern Ireland Office, August 2001

**Northern Ireland Affairs Committee Report:** House of Commons Northern Ireland Affairs Committee, Third Report of Session 2002-03, *The Police (Northern Ireland) Bill*, 28 January 2003 (HC 233)

## Appendix 2 - Progress of the Bill

05.12.02	641 c1233	Lords presentation and first reading (HL Bill 15 2002/03).
05.12.02	HL Bill 15 2002/03	(Explanatory Notes HL Bill 15-EN published).
16.12.02	642 c453- 63, 478-510	Lords second reading debate. Agreed to on question and committed to a Grand Committee.
18.12.02	HL 31 2002/03	Delegated Powers and Regulatory Reform Select Committee (HL) fifth report on the Police (Northern Ireland) Bill (HL), Public Services (Disruption) Bill (HL), and the Greater London Authority Act 1999 (Repeal) Bill (HL).
19.12.02	642 c784	Lords motion on instruction to Grand Committee on order of clauses to be taken. Agreed to on question (formal).
08.01.03	642 c1- 46GC	Lords committee stage. Grand Committee off the floor of the House (Committee Rooms 3A and 4B) first day. Clauses 1-15 agreed to, clauses 3, 4, 5 and 11 as amended.
09.01.03	642 c47- 80GC	Lords committee stage. Grand Committee off the floor of the House (Committee Rooms 3A and 4B) second day. Clauses 16-28 agreed to. Schedules 1 and 2 agreed to, schedule 3 as amended agreed to. Bill reported with amendments. (HL Bill 18 2002/03).
09.01.03	HL Bill 18 2002/03	As amended in Grand Committee (HL).
20.01.03	643 c435	Lords motion on order in which amendments be marshalled and considered. Agreed to on question (formal).
22.01.03	HC 233 2002/03	Northern Ireland Affairs Select Committee third report with proceedings, evidence and appendices. (Vote).
23.01.03	643 c846- 78,888-908	Lords report stage. Concluded. (HL Bill 23 of 2002/03).
23.01.03	HL Bill 23 2002/03	As amended on Report (HL).
30.01.03	643 c1249- 76	Lords third reading and debate on amendments. Privilege amendment agreed to. Bill passed and sent to the Commons.
30.01.03	Votes and Proceedings	First reading. (Bill 52 2002/03).
30.01.03	Bill 52 2002/03	Brought from Lords. (Explanatory Notes Bill 52-EN also published).