

House of Commons
Home Affairs Committee

**POLICE REFORM BILL:
Government Response
to the Committee's Second Report**

First Special Report of Session 2001–02

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HOME AFFAIRS COMMITTEE

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Home Office and the Lord Chancellor's Department, and their associated public bodies; the administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office.

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FIRST SPECIAL REPORT

The Home Affairs Committee has agreed to the following Special Report:

POLICE REFORM BILL: GOVERNMENT RESPONSE TO THE COMMITTEE'S SECOND REPORT OF SESSION 2001-02

The Home Affairs Committee reported to the House on the Police Reform Bill in its Second Report of Session 2001–02, published on 7 May 2002 as HC 612. The Government Response to that Report was received on 3 July 2002 in the form of a memorandum to the Committee. It is reproduced as an Appendix to this Special Report. We asked the Government to reply in time for the debate on report stage of the Bill and are grateful that this has been done.

APPENDIX

GOVERNMENT RESPONSE TO THE SECOND REPORT FROM THE HOME AFFAIRS SELECT COMMITTEE, SESSION 2001–02: POLICE REFORM BILL

Introduction

1. The Government welcomes the Committee's report and the broad support it gives for the provisions of the Police Reform Bill.
2. As the Committee acknowledged, the provisions of the Bill represent only one part of the Government's wider police reform agenda, much of which does not require primary legislation (including changes to police disciplinary procedures and pension arrangements). In taking through the Bill through both the House of Lords and the Commons we have sought to bring the debates back to the fundamental question "why reform" as the *raison d'être* for the reforms has at times been forgotten during the consideration of some of the key parts of the Bill.
3. Much has been achieved over the last five years. Since 1997 real advances have been made in reducing crime, with the British Crime Survey recording a fall by 21 per cent. There has been record investment in the police service. Police numbers are now at record numbers and on course to hit 130,000 by next spring. Next year central provision for policing will be £9.3 billion, representing an increase of over one-fifth in cash terms over the three years covered by the 2000 spending review.
4. There remains, of course, much to do. Levels of crime, and in particular street crime, remain far too high. Furthermore, the reduction in crime in recent years has not been matched by a commensurate fall in the fear of crime. If we are to make further sustained progress we need to target more effectively the 100,000 persistent offenders who are responsible for a disproportionate amount of crime and deal with the anti-social behaviour and environmental neglect that breeds the fear of crime.
5. Meeting these challenges is not simply a question of more resources. We need also to address the wide variations in performance between forces and Basic Command Units which cannot be explained away by socio-economic factors. Much of the thrust of police reform agenda is therefore directed both to supporting and challenging the police service to raise the standards of service to the level of the best. That is why we have established a Police Standards Unit, separate from the existing Inspectorate, so it can concentrate on supporting forces to improve performance.
6. That is also why the provisions of Part 1 of the Bill are central to the reform programme. Clauses 2, 6 and 7¹ establish the framework for ensuring good practice is applied across all forces. Clauses 3 to 5 provide the fail-safe mechanism for addressing poor performance where other methods have failed. Much has been said about the powers of direction during the course of the passage of the Bill and much of it has been misinformed. These clauses do not change the nature of the tripartite structure of policing, indeed it is often forgotten that the Police Act 1996 already contains the power to direct police authorities but without the safeguards which have now been incorporated.

¹ All references to clause numbers in this document are to clause numbers in the Bill as amended in Commons Committee.

7. We also need to do more to engage the whole community in the fight against crime and provide additional reassurance through an enhanced visible policing presence. The police cannot be expected to win the fight against crime and disorder on their own. The introduction of both community support officers and accredited community safety officers will provide support for the police in tackling anti-social behaviour and increasing community confidence. They will be additional to, and not replace, the record numbers of police officers that we have provided, and will continue to provide, through the Crime Fighting Fund.
8. The Government's proposals for community support officers (CSOs) have been developed in close consultation with the police service and, in particular, the Metropolitan Police. But support for community support officers is by no means confined to the Commissioner and Deputy Commissioner, about one third of forces have now expressed varying degrees of interest in appointing CSOs. There is no question of compelling forces to adopt CSOs.
9. The Government's response to each of the Committee's conclusions and recommendations is set out below.

Directions to chief officers

10. **We share the general concern that central interference in running individual forces is not desirable. We believe that the tripartite structure and operational independence of police forces are essential safeguards against politicisation and centralisation of the police. We welcome the safeguards proposed by the Government and hope it is clearly understood that these powers should only be used as a last resort. As originally proposed, this clause (directions to chief officers) was unacceptable. If it is eventually restored to the Bill with the additional safeguards on consultation, we will watch carefully to see how these powers are exercised (paragraph 17).**
11. The Government shares the view of the Committee that the tripartite structure and the operational independence of chief officers are essential safeguards against the politicisation and centralisation of the police service. Chief officers are responsible for the direction and control of their force and police authorities for providing local accountability. Nothing in the Bill changes this.
12. The power to direct chief officers, with all the attendant safeguards initially proposed by the Government in the Lords, was re-inserted into the Bill at Committee Stage (see clause 5 of the Bill as amended in Committee). These safeguards reinforce the Government's long stated position that the power to direct will only be used as a last resort. We will always look in the first instance to the chief officer and police authority to take the necessary action to address poor performance. Under the clause the Home Secretary is required to provide the chief officer concerned and the police authority with the evidence that the force, or part of the force, is failing and afford them the opportunity to make representations. The Home Secretary is further required to afford the chief officer the opportunity to put in place his own remedial measures before he is directed to do so. Where such remedial measures fully address the area of concern there would be no need for the Home Secretary to issue formal directions. The Home Secretary is also required to report the use of this power to Parliament. In addition to these new safeguards, the clause has been drafted from the outset to prevent the Home Secretary from being able to direct a chief officer in relation to a particular case or a particular person.

13. The Government notes that the Committee will watch carefully how the direction-making powers are exercised.

Police Standards Unit

14. **We do not think the Home Office has made out a convincing case for a Police Standards Unit separate in the long term from HM Inspectorate of Constabulary. We believe it is inevitable, and desirable, that the Inspectorate and the Standards Unit should eventually merge (paragraph 23).**
15. HM Inspectorate of Constabulary (HMIC) and the Police Standards Unit (PSU) have separate and complementary roles. They will work together to identify where forces and Basic Command Units (BCUs) need support to improve their performance. However, HMIC will continue to report on performance across the whole service, alerting the PSU where it believes its support is needed to improve performance. PSU by contrast will focus on particular areas where BCUs and forces need help to improve performance.
16. In doing this, PSU will draw on advice from HMIC, monthly crime data by force and BCU (and other sources where available). Its early work includes developing analysis and assessment frameworks to make best use of police performance data and quality assurance processes to ensure its accuracy and reliability.
17. The Standards Unit will begin a programme of targeting interventions in forces and BCUs in the autumn to provide intensive support where needed: it will also provide funding to help the best BCUs to innovate and develop best practice.

Regulation of Procedures and Practices

18. **We welcome the changes to clause 6 (regulation of procedures and practices) made by the Government in the Lords and believe that as currently drafted it is satisfactory (paragraph 28).**
19. The Government recognised that there was some concern about the extent of the power to regulate procedures and practices (now clause 7) in the form that it appeared in the Bill on introduction in the House of Lords. We have sought to allay those concerns by the changes which were introduced at Report Stage in the Lords. The purpose of the clause is to ensure that forces across England and Wales are able to work effectively with one another to combat criminal and terrorist activities which are not restricted within force boundaries. We were therefore happy to set out on the face of the Bill more precisely what these circumstances would be and to introduce the safeguards which have led to the Committee to regard this clause as satisfactory. No regulation will be introduced under this clause without the agreement of both the Home Secretary and HM Chief Inspector of Constabulary that such a regulation would be in the national interest and is necessary for securing the sort of co-ordination and co-operation necessary to enhance the police service's ability to tackle cross-border criminality and terrorism. Any regulation will also be subject to full consultation with the police service and with the Central Police Training and Development Authority (Centrex).

New Police Complaints System

20. **The Committee accordingly did not recommend the introduction of such an offence [of making a malicious or fabricated complaint]. We stand by that conclusion (paragraph 30).**

21. In response to the Committee's recommendation in their 1997–8 report, the Government said it would consider the scope for action in consultation with interested parties. This was not a specific issue in the consultation process in 2000 but the subject was raised by consultees. The Government concluded that an offence of making a malicious or fabricated complaint should not be introduced for the same reason given by the Committee. The Government therefore welcomes the Committee's continued stance on this issue.
22. **We welcome the provisions of the Bill for a new complaints system—which is in line with our proposals in 1997–98—and are not persuaded that they need substantial amendment (paragraph 31).**
23. **We believe that the planned budget of £14–18 million a year, the provisions of the Bill and the pilot schemes already being conducted by the Police Complaints Authority have the potential to achieve an effective and independent system dealing with complaints of a serious nature (Paragraph 32).**
24. The Government welcomes the Committee's support for the provisions in Part 2 of the Bill and its endorsement of the estimated budget for the Independent Police Complaints Commission and of the pilot schemes being run by the Police Complaints Authority.
25. **We recommend that the appointment of the chairman of the Independent Police Complaints Commission should be with the 'advice and consent' of the House of Commons (paragraph 36).**
26. The position of the chair of the IPCC is quite different from that of the Comptroller and Auditor General who reports directly to Parliament on the economy, efficiency and effectiveness of public spending.
27. The Committee on Standards in Public Life, in its first report, held that a clear line of ministerial accountability to Parliament is the best way to ensure that public appointments are made properly and the right people are held responsible for those appointments subsequently. Therefore, the chair of the IPCC will be selected under procedures set out by the Commissioner for Public Appointments and, since the Home Secretary will be accountable to Parliament for the IPCC, the Government's view is that the Home Secretary should agree the selection of the chair (before making a recommendation to Her Majesty) and he alone should account to Parliament for the appointment.
28. Accordingly, the Government does not accept this recommendation by the Committee.

Other aspects of Police Discipline

29. **We support the proposed changes to the police disciplinary procedures in the Bill, but we share the view of the Metropolitan Police Service that they do not go far enough. We believe that, so far as possible, police disciplinary procedures ought to reflect those in other walks of life. The current procedures were devised long before employment law gave protection against unfair dismissal. Taking modern employment law into account, police regulations could be simplified. We regret that the Government has not gone further in this Bill to reform police disciplinary procedures (paragraph 40).**

30. The current discipline Regulations came into force on 1 April 1999 and incorporated a number of the changes suggested in the Committee's 1997/98 report. The Government does not consider that further fundamental changes are necessary at present.
31. The Government is encouraging police managers to operate the misconduct procedures robustly and changes will be made to the guidance which is circulated to all police forces. However, the Government is very willing to work with the Metropolitan Police (MPS) and the Metropolitan Police Authority to see how their issues of concern might be addressed either in improving the practical operation of the system, or in considering changes to the regulations.
32. Looking at the changes which the MPS would like, firstly, on the question of substance abuse, the government is still in discussion with all parts of the police service on introducing compulsory random testing for substance abuse or on extending the current provisions for testing.
33. Secondly, on the suggestion about the use of written warnings, if an officer refuses to accept the warning and he is guilty, he runs the risk of receiving a more severe punishment which will go on his personal file for between 3 to 5 years whereas a written warning will go on police records for 12 months. If he is innocent, he is entitled to a proper hearing where he can question his accusers. Either way, because we should not prejudge these issues, to deny an officer a proper hearing would be to deny him his human rights. Therefore, the Government would not want to make such an amendment.
34. Thirdly, on dismissing probationers, we would look to explore with the MPS ways of handling this issue within existing regulations. Regulation 15 of the Police Regulations 1995 allows for the discharging of probationers if they are found to be physically or mentally unfit to perform their duties or are unlikely to become an efficient or well conducted officer. However, this should not be used as an alternative means of dismissing a probationer who should properly face misconduct proceedings. There will be cases where the misconduct is such that it would be appropriate for it to be dealt with in the formal context of a disciplinary hearing. If allegations are not well founded only the formal disciplinary process would guarantee fairness. There may also be scope for the police to expedite disciplinary proceedings for probationers. We are happy to look at the case for issuing new guidance but to do this we would have to consult more widely, and in any case it would be sensible to take the views and experiences of other forces into account on this subject.
35. Finally, on the discretion over referrals to the CPS, the MPS is looking for freedom for the chief officer to decide not to send a case to the CPS only if no evidence of a criminal offence was found. This is exactly what is provided for in the Bill but the MPS, unlike other forces, refer all complaints which allege criminal conduct, even where there is no evidence to support the allegation. However, where there is evidence of criminal activity, whether trivial or not, there should be no discretion in regards to submission to the CPS. A decision to bring criminal charges should be made independently from the police. If a chief officer is given a discretion and does not refer a case where there is evidence of criminal conduct, the police will attract criticism of protecting their own. This could damage public confidence in the police complaints system and in the police themselves.
36. **We believe that Ministry of Defence Police and British Transport Police operating in Scotland and Northern Ireland should be covered by complaints procedures similar to those in England and Wales (paragraph 42).**

37. As the Committee has recognised, work is underway to formalise the position so that the Ministry of Defence Police comes under the remit of the Police Ombudsman in Northern Ireland. (The British Transport Police's remit does not extend to Northern Ireland). In Scotland, policing is a devolved responsibility and so it is not appropriate for the new complaints system for England and Wales and the IPCC to apply there. The Scottish Executive is currently consulting on plans to update its own police complaints system and it has agreed with the Department for Transport and Ministry of Defence that the new system will apply to acts of misconduct in the British Transport Police and the Ministry of Defence Police occurring in Scotland. The Government understands that the Executive intends to include proposals in a white paper to be published towards the end of the year.
38. Until the new system is developed in Scotland complaints will be investigated according to the complaints regulations that cover the BTP and MoD police in Scotland. Some independence is provided to the system through the fact that outside forces can be brought in to investigate serious complaints. Also where there is a criminal allegation the matter is referred to the Procurator Fiscal who, unlike the CPS in England and Wales, directs the investigation.

Removal of Senior Officers

39. **We believe that, if the Home Office has concluded that strengthened powers are needed for the suspension and removal of chief constables, it should be able to give a fuller explanation of how they might be used. We would expect these powers to be used only in exceptional circumstances (paragraph 48).**
40. **We recommend that the proposed protocol on the operation of the powers to remove senior officers be published before the Bill reaches report stage. We hope the House, before agreeing to these clauses, will press Ministers for a fuller explanation of why they are necessary and why the matter cannot be left to police authorities (paragraph 49).**
41. The Government fully accepts that the provisions in Part 3 of the Bill are for use in exceptional circumstances. This applies equally to the power for a police authority to suspend or remove a chief officer as to the power of last resort intervention given to the Secretary of State.
42. In relation to removal powers, the main change in the Bill is to provide for the existing powers to require retirement, contained in the Police Act 1996 (and previously in the Police Act 1964), to also cater for departure by way of resignation. This is to ensure that the circumstances of chief officers who may not have reached retirement age are adequately covered. In other respects, the effect and intention of the Bill is to clarify existing procedures and remove existing overlaps or potential inconsistencies.
43. The Government is in discussion with the Chief Police Officers' Staff Association, the Association of Chief Police Officers and the Association of Police Authorities about a protocol setting out the procedures for suspending chief officers at the instance of the Secretary of State. As these discussions are ongoing it will not, in the event, be possible to publish the protocol in advance of Report Stage, but we will do so as soon as possible thereafter. In addition, we have agreed to further discussions with CPOSA and others about how the procedures in Part 3 should be operated. That may in due course lead to further guidance or regulations under new section 42A of the Police Act 1996 (inserted by clause 34 of the Bill).

44. **We recommend that police regulations be amended to prevent the retirement of any senior officer suspended on disciplinary grounds until the matter is resolved (paragraph 51).**
45. The Police (Conduct) (Senior Officers) Regulations 1999 provide for suspension of chief officers where a report, complaint or allegation has been received which indicates that the conduct of the officer did not meet the appropriate standard and it appears necessary to suspend him.
46. The Police Regulations 1995 (at Paragraph 16 of Part II) state that a member of a police force may not give notice of his intention to retire, without the consent of the chief officer of police (or of the police authority if he is a chief constable, deputy chief constable or assistant chief constable), when he is suspended while being investigated for a misconduct allegation.
47. Chief officers have no entitlement, nor can they be required, to remain in post beyond the duration of their fixed terms. If misconduct proceedings were pending at the expiry of a person's fixed term, the officer could be made to face such proceedings only by extending the person's appointment specifically for that purpose. It would not be a question simply of delaying the retirement of a person who would otherwise remain in post, as for those below chief officer level. We will consider, in consultation with CPOSA, ACPO and APA, whether there is a sufficient case to amend the regulations.

Community Support Officers

48. **We recommend that the partial police powers to be vested in community support officers and accredited community safety organisations be reflected in different uniforms, so members of the public can distinguish clearly between those with full police powers and others on duty on the streets (paragraph 65).**
49. It is, of course, important that the public are not confused by the introduction of CSOs and community safety accreditation schemes. For this reason we want the public to be able to distinguish between police officers, CSOs and members of accredited community safety schemes. The uniform worn by CSOs will make it clear that they are members of the police service whilst, as is the case with many neighbourhood or street warden schemes, accredited people will probably wear a more casual uniform. In any case, accredited people will be required to wear a badge (clause 42(2)) which identifies them as members of an accredited scheme. Both designated and accredited people will be expected to carry with them details of any powers they have been given.
50. **We accept the Government's argument that in London and possibly other areas an adequate policing presence is unlikely to be achieved by the planned increase in regular and special constables and that community support officers may be the solution in certain cases (paragraph 66).**
51. **We recognise the genuine concerns about the powers to be given to community support officers, but believe that the only way of finding out whether this proposal will work is to try it. It may be that it will only ever be used by a few police forces and that the powers will need to be amended in the light of experience. Since the Metropolitan Police Service wish to try this new system, we conclude that the proposed powers for community support officers should be approved (paragraph 67).**

52. **We note that part 4 of the Bill would not compel any police force to employ community support officers. We would like to be assured that neither clause 6 (regulation of procedures and practices) nor the ring-fencing of expenditure on policing will be used to compel any police force to go down that road (paragraph 68).**
53. We welcome the Committee's conclusion that community support officers and their powers—including the power of detention—should be approved. The role of community support officers will be distinct from that of a police officer—tackling only low level crime, public nuisance and anti-social behaviour and freeing up police officers from some of those functions which do not require their full skills and expertise. It is right that they have appropriate powers in support of this role. However, the Committee is also right to assert that these powers may require amending in the light of experience. This is why the Government brought forward an amendment at Committee Stage (now clause 45) to restore the power to amend Chapter 1 of Part 4, which was removed from the Bill in the Lords. The order-making power will enable the Government to add to or remove from the list of powers available to community support officers and members of Community Safety Accreditation Schemes set out in Schedules 4 and 5 respectively.
54. The Metropolitan Police Service are already pressing ahead with their recruitment of community support officers and are looking to extend to them the powers that are set out in the Bill once the relevant provisions are brought into force. But support for community support officers is not confined to London. An increasing number of forces have expressed an interest in appointing community support officers to provide additional support to both officers and the communities they serve. The Government has repeatedly made clear that there will not be any compulsion for forces to employ community support officers and it would be outside the scope of the regulation-making power in clause 7 (formerly clause 6) to use it to compel forces to go down this road. However, the Government believes that there is a case for providing funding to pump-prime the ideas in this part of the Bill to show that community support officers can be effective.
55. **We invite the Government to clarify its intentions about clause 35 (police powers for police authority employees) in respect of the detention officer role being carried out by civilian staff working under contract as well as those directly employed by police authorities. In particular, we are concerned that a drift to a 'contracting out' culture will lead to civilians with insufficient training working in poor conditions for less money while doing jobs which until recently were undertaken by police officers (paragraph 70).**
56. One of the aims of the police reform programme is to free up police officers' time for front line operational duties. One of the ways we are doing this is to allow properly trained civilians to take on tasks which do not require the full skills and training of a police officer. The Government believes that there are clear potential benefits from civilianisation in terms of improving efficiency, saving resources and freeing up police officers for other duties.
57. Since the publication of the Bill, several police forces have been in touch with us about their plans to contract out custody services to private providers and have indicated that it would help to maximise the effectiveness of such plans if private providers could make use of the various custody-related powers we are aiming to open up to police authority employed support staff through the Bill. The Government notes that the Committee received similar representations from the Chief Constable of Thames Valley Police.

58. The wider the scope of duties available to the private sector supplier, the more likely it is that efficiency savings can be achieved which is a key reason not to deny powers to contracted out staff. The Government accordingly brought forward amendments to the Bill at Commons Committee Stage (see, in particular, what is now clause 40) to enable a chief officer to designate the employees of a private sector provider as detention and/or escort officers. It would be open to a chief officer to confer on such designated persons the same range of powers as they may confer on police authority employed support staff.
59. The same safeguards will apply as for designated support staff employed by the police authority. Before granting designation the chief officer would have to be satisfied that the person was suitable to exercise the relevant powers, capable of carrying out the associated functions and appropriately trained. The chief officer would also need to be satisfied that the contractor is a suitable employer to supervise the designated persons, as in the case of an employer of accredited persons.
60. In addition, we have made provision for dealing with allegations of misconduct by contracted out staff who are exercising police powers. The Secretary of State will be able to make regulations applying the provisions of Part 2 of the Bill to designated contracted out staff. This will include bringing them within the remit of the Independent Police Complaints Commission.
61. Finally, contracted out staff will be required, in the same way as police officers and designated police authority support staff, to have due regard to the relevant provisions of the Codes of Practice under the Police and Criminal Evidence Act 1984.
62. **Moreover, we are opposed to civilians, whether employed by the police or private companies, being given powers to assist in or undertake intimate body searches (paragraph 71).**
63. The Government understands the Committee's concern about intimate searches, which are after all extremely intrusive procedures. However, in the fight against crime it is sometimes necessary for the police to exercise their powers to authorise and conduct these searches which may be for drugs or other harmful articles. Section 55 of PACE sets down significant safeguards which limit the way in which such searches can be authorised and conducted. All these safeguards will apply to civilian detention officers irrespective of whether they are employed by the police authority or whether they are contracted out.
64. Although only a small number of intimate searches are carried out by non-medical personnel, when such searches are required they are often very urgent in terms of the need to remove a dangerous article which the detained person might use to harm himself or others. There is no obvious reason why a suitably trained civilian, contracted out or not, should not perform that task. Where forces substantially contract out their custody services it is important that such urgent duties can be carried out by the trained personnel on the spot. That is far preferable to having to call for a police officer who may take time to arrive and may not have the same level of training. Powers will of course only be granted where the chief officer is satisfied that the individual concerned is suitable, capable and properly trained.
65. The current circumstances in which a police constable can conduct an intimate search for potentially dangerous articles under section 55(1)(a) of PACE are very limited. Such a search may only be carried out with the authority of a senior officer. And that authority can only be given if there are reasonable grounds to believe the

person has concealed on them something which they may use to cause physical injury to themselves or others. In addition, the authorising senior officer must also have reasonable grounds to believe that the item cannot be found in any other way.

66. Any search must be conducted by a registered doctor or nurse unless the senior authorising officer considers that this is not practicable. An example of where this might not be practicable would be where the senior officer reasonably suspects a person has concealed a harmful article on himself, such as razor blades, and no doctor or nurse is available to conduct the search. In practice, such scenarios where a police officer would be authorised to carry out the intimate search are very rare (in 2000/2001 only 5 out of the 131 intimate searches conducted in England and Wales were carried out by police officers).
67. As the Committee will be aware, revised PACE Codes of Practice were issued for consultation on 12 June 2002. The revised Annex A to Code C, which covers intimate searches, provides that any proposal for a search to be carried out by someone other than a medically qualified person should only be considered as a last resort and when the authorising officer is satisfied that the risks associated with allowing the item to remain in place outweigh the risks associated with removing it. Notes for Guidance have been added and include advice on factors the authorising officer should consider before authorising an intimate search.

Recovery of cost of policing football grounds, night clubs etc.

68. **We believe that the difficulties involved in recovery of policing costs from nightclubs and football clubs are unlikely to be resolved in this Bill but the Home Office circular 34/2000 on this subject should be reviewed (paragraph 77).**
69. The Government remains concerned at the costs incurred in policing entertainment venues, particularly pubs and clubs which operate late into the night and major events such as sporting and outdoor entertainments. We are keen to explore how we might encourage and develop arrangements under which entertainment venues make a contribution to the policing and public order costs generated by their activities. Complex issues need to be resolved in order to find a way forward. The Government is grateful for the Committee's helpful suggestion that Home Office Circular 34/2000 "Home Office guidance on football-related legislation" should be reviewed. As part of the Government's ongoing work in this area, we will consult interested parties about Chapter 13 of this circular, which deals specifically with charging for policing football.

Whistleblowers

70. **We recommend that the Bill be amended to bring police officers within the Public Disclosure at Work Act 1998 (paragraph 79).**
71. The Government accepts this recommendation. Clause 37 of the Bill, as amended in Committee, brings police officers within the ambit of the Public Interest Disclosure Act 1998.

Riot (Damages) Act 1886

72. **The Riot (Damages) Act 1886 seems arcane and a good case has been made for repealing it. Without prejudice to any existing cases, the Government should seek to repeal the Riot (Damages) Act 1886 (paragraph 81).**
73. The Government are considering very carefully whether there is a continuing need for the Riot (Damages) Act 1886. This is the first serious review for some time of this legislation, which, though now old, does have a real value. The key issue is to decide where responsibility should lie for making good the cost of riot damage. Repeal would be simple, but could create problems whilst resolving others.
74. The Government are aware of the strongly held views of the police service about the liability that this legislation places upon them and understand their disquiet at being financially responsible for compensation. The Government accept that normally there is no case for public compensation for criminal damage, but riots have always been accepted as a special case. Compensation provides a safety net for businesses and households in inner city areas where civil disturbances are most likely, and where property owners may have difficulties obtaining insurance, at least at affordable rates.
75. Moving financial liability from police authorities to insurance companies would not be straightforward. Repeal of the Act is likely to lead to an increase in premiums in areas where riots have occurred, or which are deemed to be high risk. There is evidence that in the wake of last summer's disturbances the insurance industry has increased insurance premiums in cities/towns where the disturbances occurred. So simple repeal would not address the problem of householders and businesses facing high premiums for insurance in inner cities more likely to have higher rates of crime or be at risk of civil disturbance, or who are deterred by increasing premiums from taking out cover.
76. Riots are relatively infrequent but they can have a devastating effect on those caught up in them. They almost always occur in deprived areas where insurance maybe expensive or hard to obtain and where the ability of residents to afford insurance premiums may be limited. The Riot (Damages) Act provides a useful safety net. Our review of the Act needs to consider whether there are other means of avoiding a situation which might prove counter-productive and discourage responsible businesses and householders from staying in areas where they are needed.

Medical retirement and sickness

77. **We recommend that the Government either bring forward amendments to the Bill to improve the arrangements for medical retirements or publish draft delegated legislation on this subject before the Bill receives Royal Assent (paragraph 86).**
78. The arrangements for medical retirements are set out in secondary legislation—the Police Pensions Regulations 1987. Accordingly primary legislation is not required to improve the arrangements for medical retirements.

79. Arrangements for improving the management of ill-health were included in the agreement reached by the Police Negotiating Board on 9 May on a package of reforms to police pay and conditions of service. The agreement identified three key objectives in the management of ill-health:
- to ensure that personnel practices in forces and the pensions regulations combine to ensure that fair and effective decisions are taken on poor attendance and ill-health retirements;
 - to ensure that, where possible, police officers are rehabilitated for duty rather than retired on ill-health grounds; and
 - to ensure that there is greater consistency in decision making practice between forces.
80. Appendix G of the agreement (reproduced at Annex A) set out agreed principles to achieve these objectives. A PNB working group has been established to agree the detailed amendments to the Police Pensions Regulations and to draw up guidance to enable the agreed policies to be implemented in each force with effect from 1 April 2003.

Police property

81. **We recommend that the legislation on police property be amended to take into account the creation of the National Crime Squad and the National Criminal Intelligence Service (paragraph 88).**
82. The Government accepts this recommendation as it relates to the National Crime Squad. Clause 73 of the Bill, as amended in Committee, amends the Police (Property) Act 1897 so that property that comes into the possession of the National Crime Squad during an investigation may be sold or retained for use by the Squad.
83. The Government has concluded that the 1897 Act should not be extended to cover the National Criminal Intelligence Service, because that organisation is not involved in the investigation of suspected offences at an operational level.

*Rt Hon John Denham MP
Minister for Crime Reduction, Policing and Community Safety
Home Office
July 2002*

EXTRACT FROM POLICE PAY AND CONDITIONS AGREEMENT 9 MAY 2002**G IMPROVING THE MANAGEMENT OF ILL-HEALTH****Criteria for ill-health retirement**

1. The police service should not lose the skills and experience of officers who are still able to make a valuable contribution. Officers should not therefore have to retire on medical grounds unless it is necessary.
2. An assumption that there may be an entitlement to an ill-health pension because an officer is unable to carry out full operational duties can create an unhealthy climate of expectation. There should accordingly be clarity about the criteria for medical retirement and about where responsibility lies for final decisions on medical retirement.
3. To this end, the PNB will issue joint guidance during 2002:
 - (a) Reinforcing the fact that it is senior management and the police authority and not medical advisers who ultimately decide on medical retirements;
 - (b) Advising on the interpretation and application of “ordinary duties” with a view to ensuring wherever possible the retention of officers in service where they are still capable of undertaking sufficient duties to justify continuing employment;
 - (c) Clarifying that “permanent disablement” should be interpreted as meaning that the officer will not be able to work again as a police officer before the compulsory retirement age for the officer concerned, on the assumption that normal medical treatment for the officer’s condition is applied in the meantime;
 - (d) To advise on the questions that should be put to selected medical practitioners (SMP);
 - (e) To advise that the two circumstances (in addition to those in 3(b) above) where discretion not to proceed with a medical retirement is most likely to be used are:
 - where an officer who qualifies for medical retirement wishes to remain in service and the force wishes to retain him or her;
 - where an officer faces disciplinary proceedings and medical retirement is set aside so that those proceedings can continue in all but the most exceptional cases.
4. In addition, the Police Pensions Regulations will be amended:
 - to remove the distinction between the duties of male and female officers;
 - to include a definition of “infirmity” as a disease or medical condition, including a psychiatric disease or condition;

- to add a new proviso to Regulation A20 to require police authorities in making their determinations to give due consideration to all the circumstances and advice and information available to them.

Unacceptable attendance

5. The Sides agree to discuss poor attendance management through the Police Advisory Boards during 2002, taking cognisance of ACAS Guidance, tailored to the requirements of the police service; and to come to an arrangement through amendments to Police Efficiency Regulations where the aim is to secure improvement in attendance, with sanctions (including the possibility of dismissal) where that fails. The arrangement will include an appropriate appeals mechanism.

Strategies for effective management of medical retirement

6. Police authorities will develop in consultation with staff associations strategies for the effective management of medical retirement that set out the roles and responsibilities of both the force and authority and that place sickness management, occupational health provision and medical retirement in the wider context of effective career management and operational effectiveness.
7. The strategy should also set out the duties and responsibilities of the force medical adviser (FMA) and the support that management will give to the FMA.

Sick pay within a strategy for managing sickness absence

8. It is recognised that (subject to amendment of Police Regulation 46) the Police Regulations already provide adequate powers for chief officers to exercise discretion over the question of paid sick leave in the interests of supporting or encouraging rehabilitation. Use should be made of this discretion in appropriate cases.
9. Police Regulation 46 (and equivalent Regulations in Scotland and Northern Ireland) will be amended to provide the cumulative method of calculating sickness absence over the previous year when determining whether an officer is due to come off paid sick leave. The PNB will consider guidance in relation to situations where it would be reasonable for chief constables to exercise their discretion favourably to resume/maintain paid sick leave.

Consideration of early retirement on medical grounds

10. Priority should always be given to an appropriate programme of rehabilitation rather than premature consideration of medical retirement. However, where medical retirement does have to be considered, the system should be both fair and transparent. The PNB will consider how best to provide greater clarity as to the sequence of events in the management of medical retirement cases and the roles of the police authority, FMA and SMP. This will include the stage at which cases are referred to the SMP for determination and whether or not there are circumstances in which it is justified to request the SMP to reconsider their determination.

The role of the selected medical practitioner

11. The duties of the SMP will not normally be carried out by the FMA but by somebody removed from the day to day care of officers. In exceptional circumstances there should be a board of three doctors appointed by the police authority rather than a single SMP.

12. SMPs will be provided with, and work to, appropriate medical guidelines drawn up by the Home Office after consultation with both Sides of the PNB.
13. It is recognised that police authorities may wish to collaborate on a regional basis to develop a suitable list of SMPs.

Appeals

14. A fair and transparent system of medical retirement needs to be underpinned by a robust appeals system. The Police Pensions Regulations will therefore be amended so that medical referees appointed by the Home Office are replaced by boards drawn from panels of medical practitioners (similar to the arrangements now in place in the fire service). The appellant may be required to bear the costs in the case of a vexatious or frivolous appeal.
15. The Police Pensions Regulations will be amended to provide for further measures to improve procedures and limit appeals to cases where there are genuine differences of opinion:
 - in addition to the current provisions for giving notice of intention to appeal, for which there will now be a 28 day limit, there will be a requirement for the appellant to give a written statement of grounds for appeal within a further 28 days. These limits may be extended at the discretion of the police authority.
 - The police authority and the appellant will have the opportunity to agree to an internal review of the SMP's decision in the light of the officer's grounds of appeal, without prejudice to the formal right of appeal.

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