

House of Commons
Northern Ireland Affairs
Committee

**THE POLICE
(NORTHERN IRELAND)
BILL**

Third Report of Session 2002–03

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(NORTHERN IRELAND)
BILL**

Third Report of Session 2002–03

*Report, together with
Proceedings of the Committee,
Minutes of Evidence and Appendices*

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The Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Northern Ireland Office; administration and expenditure of the Crown Solicitor's Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

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Contacts

All correspondence should be addressed to The Clerk of the Northern Ireland Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 2172/3; the Committee's fax number is 020 7219 0580; and the Committee's e-mail address is: northircom@parliament.uk

Footnotes

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THIRD REPORT

The Northern Ireland Affairs Committee has agreed to the following Report:

THE POLICE (NORTHERN IRELAND) BILL

LIST OF CONCLUSIONS AND RECOMMENDATIONS

- (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).

INTRODUCTION

1. The changes that the Government are proposing in the Police (Northern Ireland) Bill focus primarily on:

- strengthening the role of the Northern Ireland Policing Board;¹
- clarifying the Board's relationship with the Chief Constable of the Police Service Northern Ireland (PSNI) and the Secretary of State; and
- giving the Chief Constable greater flexibility in the deployment of officers and civilian staff.²

The Bill's provisions form part of the ongoing reform of policing in Northern Ireland, following the Belfast Agreement in 1998 and the Patten report, *A New Beginning: Policing in Northern Ireland*, which was published in September 1999. A number of the provisions in the Bill arise from commitments made by the Government at Weston Park in July 2001, following which the Government re-affirmed its commitment to implement the Patten report.

2. Clauses for the Bill were published in draft on 25th November 2002. We decided that we should carry out pre-legislative scrutiny of the clauses which had been provided: we comment further on the process of scrutiny below. We took evidence from Jane Kennedy MP, Minister of State for Northern Ireland, and officials from the Northern Ireland Office on 12th December 2002 and 9th January 2003. We received submissions relating to the Bill from the Committee on the Administration of Justice (CAJ), the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO), from Ian Paisley Jr., a Member of the Legislative Assembly and of the Police Board, and from the Northern Ireland Human Rights Commission. We are grateful to them for providing us with their views.

The process of scrutiny

3. Prior to publication of the draft clauses, we had been aware of the Government's intention to introduce a bill on policing matters during the current session and had determined that we should hold an inquiry at the appropriate time. But our plans to conduct pre-legislative scrutiny were rapidly curtailed by the decision of the Government to introduce its Bill to Parliament only ten working days after publication of the clauses in draft, on 9th December 2002. Second Reading of the Bill in the Lords followed a week later (16th December 2002), and the Committee stage began on 8th January 2003, the day before our second meeting with the Minister.

4. 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."³

5. As we have commented elsewhere,⁴ 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

¹ The Board was set up by the Police (Northern Ireland) Act 2000, which dissolved the previous Police Authority for Northern Ireland. The Board's role includes monitoring the performance of the police, assessing the public's views on policing matters and making arrangements to obtain public co-operation in relation to crime prevention. The Chief Constable is answerable to the Board for the exercise of his functions.

² Q1

³ Q1

⁴ Second Report of the Committee, *Annual Report 2002*, HC 271, 2002-2003

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.

6. 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".⁵ 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).

7. 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.

8. We have recommended in our Annual Report that

*"The practice of publishing legislation in draft when it is plainly too late for the shape of the final Bill to be modified before introduction is pointless and frustrating. It also runs the risk of making the NIO appear only superficially interested in the concerns of those it is meant to serve. We call on the NIO to re-assess its priorities in preparing legislation, and to prepare its draft legislation in an organised manner which consistently allows for proper consultation."*⁶

Having discussed the provisions with the Minister we are satisfied that much of the Bill does not require comment on our part, although we have reproduced our discussions and correspondence in full. Given the timescale, and the fact that the text is currently under consideration in the Lords, we have confined our observations to a small number of policy issues. Clause numbers referred to in this Report refer to the Bill as it was introduced to the House of Lords.⁷

Public meetings of the Board (Clause 3)

9. At present the Police Board is required to hold at least ten public meetings in any year. Clause 3(2) of the Bill proposes that the minimum number should be reduced to eight meetings a year. The CAJ and NIACRO both raised concerns that such a move would reduce the Board's accountability.⁸

10. We were told that the suggestion for this amendment came from the Board itself, which requested both this measure and the power, if it wished, to meet more than once in any 28-day period. The latter request seems entirely sensible.

11. The Minister told us that the Board to date had been very active and had progressed "in a very constructive and consensual way". For this reason, understanding that the Board had "no intention of reducing their visibility", the Minister had considered it appropriate to provide the Board with more flexibility in managing its activity.⁹ Nonetheless, she recognised that a criticism of reduced accountability could be made.

⁵ Q43

⁶ Second Report of the Committee, *Annual Report 2002*, HC 271, 2002-2003 paragraph 13

⁷ HL Bill 15

⁸ Ev19, 22

⁹ Q12

12. We recognise that this must have been a difficult decision. **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.**

13. We note that the Minister’s decision in this instance runs counter to the recommendations of Patten which, by specifying a public meeting once a month, effectively required at least 12 public meetings a year. The explanation given for this departure is that practice indicated the benefits of a slightly different approach. As the process of reform continues we hope there will continue to be an openness in Government to a degree of sensible adjustment. It occurs to us that, at some future point, a review of the entire Patten reform process might yield valuable insights.

Reports of the Chief Constable, and disclosure of information (Clauses 8, 9, 17 and 19)

14. Clauses 8, 9, 17 and 19 make reference and amendment to provisions in sections 59 and 60 of the Police (Northern Ireland) Act 2000. The substance of the amendment lies in Clause 19 (Disclosure of information and holding of inquiries).

15. Under the 2000 Act the Chief Constable is able to refer requirements from the Board for a report, or for an inquiry, on a policing matter to the Secretary of State if he believes that fulfilling the requirement would necessitate the disclosure of information which should not be disclosed. The 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.¹⁰

16. The bill makes two substantial amendments to the current provisions. The grounds under (b) are amended to read:

“(b) [the information or matter into which inquiry is to be made] is *sensitive personnel information or information the disclosure of which would be likely to put an individual in danger*”¹¹

The grounds under (d) are removed.

17. The Minister told us that in both cases the amendment brought the law closer into line with the recommendations of the Patten report.¹² This stated:

“The grounds on which the Chief Constable might question this requirement should be strictly limited to issues such as those involving national security, sensitive personnel matters and cases before the courts.”¹³

¹⁰ Police (Northern Ireland) Act 2000 ss59(3), 60(3)

¹¹ Clause 19 (1), inserting s76A 1(b) and 2(b)

¹² QQ16, 19

¹³ *A New Beginning: Policing in Northern Ireland*, Paragraph 6.22, cited in Q19

We were however 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.

18. This issue has also been debated at some length in the House of Lords, where similar reservations have been expressed about the need to retain the grounds for non-disclosure in relation to crime prevention.¹⁴ The Lord Williams of Mostyn reminded the Grand Committee that under section 59(2)(b) of the 2000 Act, which the Government has retained, the Chief Constable will still be able to defer making a report to the Board on an issue of sensitivity, provided the Board agrees. This provides some "flexibility" which may prove helpful in respect of current investigations.¹⁵

19. Beyond simple adherence to the provisions of the Patten report, the Minister suggested that the amendment strengthened the position of the Board:

"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".¹⁶

As we have previously stated (see paragraph 12 above) 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.

Investigations by the Ombudsman (Clause 11)

20. Clause 11 seeks to replace the existing provision in section 61A of the Police (Northern Ireland) Act 1998.¹⁷ It would give the Ombudsman a new power to *investigate* police practices or policies, where currently she is able to "make ... a report on any matters concerning the practices and policies of the police".¹⁸

21. Two main concerns were raised about this provision, which arises from a commitment made by the Government at Weston Park:

- that the new clause would enable the Ombudsman to look into matters retrospectively for the first time; and
- that by introducing the word "investigate", and a new test of "significant public concern" which might trigger an investigation, the new provisions represented a limitation on the powers to report which the Ombudsman currently exercises.¹⁹

22. The Minister assured us that it was not the Government's intention that the Ombudsman's power to investigate under Clause 11 would be retrospective. She was

¹⁴ *Official Report* [HL] 9 January 2003 cc GC68-75

¹⁵ *Official Report* [HL] 9 January 2003 cc GC68-69

¹⁶ QQ16-17

¹⁷ Inserted by s63 of the Police (Northern Ireland) Act 2000

¹⁸ S61A, 1998 Act

¹⁹ Ev 23; 22

considering whether this should be made explicit in the Bill. She also acknowledged that the Ombudsman's office had expressed concerns about possible restrictions on the Ombudsman's powers as a consequence of the new provision, although in her view the use of the word "investigate" had "a stronger connotation ... [of] detailed consideration of a particular issue" than the current provision to "report" had. She indicated that the Government had yet to finalise its stance on this question.²⁰

23. On the Minister's second appearance before us, she advised us that after further consultation the Government had submitted amendments in the House of Lords which would change the wording of clause 11 to read:

"(1) The Ombudsman may investigate a *current* practice or policy of the police if [...] (b) he has reason to believe that *it would be in the public interest to investigate the practice or policy*".²¹

The word "*current*" was intended, as we had discussed, to make explicit that the new power was not retrospective in its application. The amendment replacing "*significant public concern*" with "*in the public interest*" was considered by the Government to improve the text in two ways. 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.²² **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.**

Accountability of the Ombudsman

24. One of the submissions made also expressed strong concerns that the office of the Ombudsman was not accountable to any other body.²³ The Minister told us that while this had been true in the past, the office had now been brought under the remit of the Criminal Justice Inspectorate which also has responsibility for overseeing the work of other organisations in the criminal justice system such as the Court Service.²⁴ She also indicated that it had been difficult to achieve a formal system of redress for complaints of maladministration. The Government was currently awaiting the outcome of the Police Association's judicial review of the handling of the Ombudsman's investigation into the Omagh bombing. While recent discussions with organisations such as the Police Federation indicated a greater degree of satisfaction with the procedures of the Ombudsman's office than had previously been the case, she believed the situation might need to be reviewed in future.²⁵

Independent Members (Clause 12)

25. Clause 12 places a requirement on the Board, in appointing independent members of a district policing partnership (DPP), that it "*shall so far as practicable secure*" that the DPP is "*representative of the community in the district*". The Board is required to appoint the independent members from a list of nominees presented in each case by the district council

²⁰ Q43

²¹ Our italics. QQ92-94

²² *Official Report* [HL] 8 January 2003 cc GC25-32

²³ Ev 23

²⁴ Q97

²⁵ QQ97-98

for the area. Both the council, in nominating, and the Board in appointing the members are required to have regard to a code of practice issued by the Secretary of State.²⁶

26. We were concerned about the proposal for two reasons. 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, 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.

27. When we first questioned the Minister about the risk that the provision might, in some instances, encourage the appointment of members from a single identity background, she appeared surprised at the suggestion:

“I do not think that is how we would envisage it working. We would envisage it having the opposite effect.”²⁷

While it may not be what the Government envisages, we can foresee occasions when the provision might work in ways contrary to the Government’s expressed objective. The phrase “representative of the community” might be interpreted in a number of ways – relating not only to cultural or political affiliation but also to issues such as gender, age and disability – which might at times conflict, or be difficult to meet for other reasons. For example, the Minister allowed that the nature of politics in Northern Ireland was such that the majority of political representatives there are male.²⁸

28. 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.²⁹ 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.

29. 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.

30. We were, however, reassured to hear from the Minister that the Code of Practice published by the Secretary of State in August 2002, under paragraph 6 of Schedule 3 of the Police (Northern Ireland) Act 2002, requires councils to consider certain criteria and competences when determining its nominations for the independent members’ posts. These were that the candidates should:

- have a demonstrable interest in the local community, community safety or policing issues;
- be resident in, or have a close connection with the council area;
- be able to think and exercise sound judgement;
- have experience of working in a team;
- be able to present information clearly and logically; and
- have experience of working with others and maintaining networks.³⁰

²⁶ Police (Northern Ireland) Act 2000 Sch. 3 paras 5-6

²⁷ Q28

²⁸ Q37

²⁹ Q38

³⁰ Q86.

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.

Police support staff (Part 2)

31. The third key area with which the Bill is concerned is the provision of greater flexibility for the Chief Constable in allocating his uniformed and civilian staff. We were grateful for the opportunity to discuss with the Minister progress on civilianisation, in the context of the new powers the Bill creates for certain responsibilities – such as the taking of intimate samples (clause 24) – to be conferred on support staff.

32. During our first meeting with the Minister and officials we were disappointed by a comment from an official that “it would be unusual in the Northern Ireland context for the PSNI to be taking civilianisation faster forward than in England and Wales”.³¹ This seemed to us to underestimate the crucial fact that **there is in Northern Ireland a particularly urgent need to release more officers for front-line police work.** Later, we returned to this question and, in particular, concerns which had been expressed to some of us in other contexts that civilianisation was being hindered by the need to recruit on a 50:50 basis between the communities.

33. We were assured that concerns about 50:50 recruitment, which is required in competitions where there are six or more vacancies, were recognised. Mr Robin Masefield, head of the Patten Implementation Group at the NIO, told us that while the response to early recruitment campaigns for support staff had been disappointingly uneven, responsibility for recruitment had recently been contracted out to a private company. The company had achieved a degree of success in recruiting on a 50:50 basis where the requirement applied, although it was acknowledged that the numbers of recruits sought had so far been low. We were encouraged to wait and see if the company’s early performance would be sustained and improved in the coming year.³² We shall do so, and will return to this issue at a later date.

The text for consideration

34. On 25th 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 were published following undertakings given at Weston Park. The Government’s intention in publishing was not to express a firm intention to legislate, 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:

- the disqualification of individuals who have a criminal conviction, and who have undergone a period of imprisonment, for the post of independent member of a DPP for a period of five years from discharge in respect of the offence;
- 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.

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

³¹ Q56

³² QQ78-80

“...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.”³³

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.³⁴

36. In so far as the proposals for the sub-groups extend the provision for the district policing partnerships, our earlier comments on the DPPs again apply (see paragraphs 25 - 30). Beyond this, in the light of the Minister’s comments and given that the text does not constitute part of the Bill currently before Parliament, we do not intend to comment further.

³³ Q4

³⁴ Q106

PROCEEDINGS OF THE COMMITTEE RELATING TO THE REPORT

WEDNESDAY 22ND JANUARY 2003

Members present:

Mr Michael Mates, in the Chair

Mr Adrian Bailey
Mr Roy Beggs
Mr Tony Clarke
Mr Stephen McCabe
Mr Stephen Pound

Mr Peter Robinson
Rev Martin Smyth
Mr Hugo Swire
Mr Mark Tami

* * *

Draft Report (The Police (Northern Ireland) Bill), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 36 read and agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (reports)) be applied to the Report.—(*The Chairman.*)

Several papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.—(*The Chairman.*)

* * *

[Adjourned till Wednesday 29 January at a quarter past Four o'clock.]

LIST OF WITNESSES*Page*

HC 233-i
Thursday 12 December 2002

NORTHERN IRELAND OFFICE

Ms Jane Kennedy MP, Minister of State, Mr Robin Masefield, Head, Patten Action Team
 and Ms Clare Salters, Police (NI) Bill team leader 1

HC 233-ii
Thursday 9 January 2003

NORTHERN IRELAND OFFICE

Ms Jane Kennedy MP, Minister of State, Mr Robin Masefield, Head, Patten Action Team,
 Ms Clare Salters, Police (NI) Bill team leader, and Mr Steven McCourt, member of the Bill
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The Financing of Terrorism in Northern Ireland: Interim Report on the Proceeds of Crime Bill

Third Report: HC 978-I

Introduction of the Aggregates Levy in Northern Ireland: The Government's Response

Fourth Report: HC 978-II

The Financing of Terrorism in Northern Ireland. Volume II of this Report (HC 987-II) includes the Government Response to the Second Report, Session 2001–02, The Financing of Terrorism in Northern Ireland: Interim Report on the Proceeds of Crime Bill, HC 628.

First Special Report: HC 332

Government Response to the Committee's Fifth Report, Miscellaneous Financial Matters, Session 2000–01, and the Government Response to the Committee's Third Report, The Northern Ireland Office 2000 Departmental Report, Session 1999–2000

Second Special Report: HC 400

Government Response to the Committee's Fourth Report, Legal Aid In Northern Ireland, Session 2000–01

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Government Response to the Committee's Second Report, The Parades Commission, Session 2000–01

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Fifth Special Report: HC 1118

Government Response to the Committee's Third Report, The Introduction of the Aggregates Levy in Northern Ireland, Session 2001–02

Sixth Special Report: HC 1347

Government Response to the Committee's Fourth Report, The Financing of Terrorism in Northern Ireland, Session 2001–02

Session 2002–2003

First Report: HC 105-I

The Impact in Northern Ireland of Cross-Border Road Fuel Price Differentials: Three years on

Second Report: HC 271

Annual Report 2002

Third Report: HC 233

The Police (Northern Ireland) Bill

MINUTES OF EVIDENCE

TAKEN BEFORE THE NORTHERN IRELAND AFFAIRS COMMITTEE

THURSDAY 12 DECEMBER 2002

Members present:

Mr Michael Mates, in the Chair

Mr Adrian Bailey
Mr Roy Beggs
Mr Tony Clarke

Mr Eddie McGrady
Mr Stephen Pound
Mr Peter Robinson

Examination of Witnesses

MS JANE KENNEDY, a Member of the House, Minister of State, Northern Ireland Office, MR ROBIN MASEFIELD, Head, Patten Action Team, and MS CLARE SALTERS, Police (NI) Bill team leader, Northern Ireland Office, examined.

Chairman

1. Minister, thank you very much for coming to see us again. We seem to be doing this very regularly and I hope it is for the benefit of both of us. As you know, we want to ask you some questions on the draft clauses in the Policing Bill. Is there something you want to say to us first?

(*Ms Kennedy*) Probably just to set the scene if that is helpful. First of all, I should introduce my team. Robin Masefield on my left is Head of the Patten Action Team within the Northern Ireland Office, and has been working on this project for heaven knows how long and is very much an expert in how these ideas have developed and why we are considering them today. Clare Salters is one of Robin's team. Among the three of us I hope we have brought before you the people who know the most about this Bill and its origins. The Bill that we are looking at is now published in the format of the Bill whereas previously we had published it as draft clauses. You know the parliamentary timetable that it is facing. It is perhaps worth saying to you why we are proceeding in this way and what our objectives are in terms of the timetable. We would be seeking to achieve Royal Assent before Easter, although there are parliamentary constraints upon that and it is very difficult to predict how legislation will go. The reason for seeking to achieve that timetable, as the Northern Ireland parties around this table will know, is that it is a particularly interesting time because, if elections go ahead in May, as we intend at this moment, then there will obviously be a lot of interest. It was certainly the declared wish of the parties when we were consulting them on this legislation that we should seek to make progress as rapidly as possible and get it dealt with and out of the way before election campaigns proper began, which we anticipate will be at Easter time. The majority of measures in this Bill are intended to implement commitments that the Government made in the summer of 2001, in August, at Weston Park. You appreciate that I had been in office as Security Minister then for a mere two months. None the less, the commitments that we made were part of an overall objective to achieve cross-community support for policing in Northern Ireland and for the changes that were taking place as a result of the

Patten commitment. The changes that we are proposing in this Bill focus primarily on strengthening the role of the Policing Board, clarifying its relationship with the Chief Constable and the Secretary of State, and in that it is consistent with Patten. We are also taking the opportunity to introduce measures to give the Chief Constable greater flexibility in the deployment of officers and civilian staff. These are directly as a result of representations he has made but also they flow from Patten, very sensibly I think. Again, through the Bill we are making clear that policing in the community is to be one of the core policing principles along with the human rights based approach to policing that is now enshrined in the new code of ethics. All of these issues are very symbolic and important to the parties in order to achieve that cross-community support that we are working towards. In fact, we have achieved a very wide degree of support for the new beginning to policing in Northern Ireland. For policing to be effective at its heart it has got to have fundamental principles of human rights for all of us and it must command the support and co-operation of all sections of the community. The police themselves know this and they want to achieve this. The provisions in this Bill simply emphasise that. The Policing Board has already made a very significant contribution to policing in Northern Ireland, as has the new Chief Constable who I know has given evidence to you recently. Before I finish I ought to say something about what is not in the Bill, namely, the text for consideration that we have published separately. Again, this arises out of a commitment that we made in the revised Implementation Plan that was a commitment that we made to review the existing powers for Belfast sub-groups, to review whether they were sufficient and also, and probably of most intense public interest, whether the bar on ex-prisoners being considered for membership of district policing partnerships was necessary. We have published those and we can explore with you in greater depth what the reasoning on that is. When we published them separately it was because it was our express intention to say, "This is what we might do if the time is right, but we do not believe that the time is right yet". It was an attempt to be as open as we possibly could be so that people would know what

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our thinking was in terms of what we would do if the time and circumstances were right, and to give everybody an opportunity to debate those issues properly as the rest of the Bill would be considered through Parliament. As I have said, we wanted to set that out very clearly and also to demonstrate that we would be prepared to legislate. The text for consideration is presented in legislative form. There are effectively working clauses, so that everybody, and particularly those with an interest in this, could be clear about what our position was. The ball is now quite clearly in the court of those who we are looking to to make a move, the Republicans, that is. We are serious about our intent. This is what we would do if they were to support policing and we wait to see their response. I think I have said enough.

2. You have answered the first three questions we were going to ask you. Thank you very much; that is very helpful indeed. Is there any respect in which the draft clauses differ from the August 2001 updated Implementation Plan for the Patten Report?

(*Ms Kennedy*) Yes, there are a few changes. There are a number of changes in the Bill that arose out of proposals that the Policing Board themselves have made to us. Those are to give greater flexibility on the frequency and spacing of the Board's public meetings and also to provide for the Board to secure representativeness when the appointments to the DPPs are being made, that is, of the independent members. Thirdly, other changes that are outside of Weston Park would be to put the Chief Constable under what we describe in the Bill as "a general obligation to provide information to the Board", subject to certain caveats, and again potentially, after discussion with the Chief Constable, the provisions enabling experienced officers from other forces to come in more quickly. We are still considering those. We do not have those detailed proposals in draft form yet and I think we are waiting for further consideration of them by the Board.

3. But it is your hope to add it to the Bill?

(*Ms Kennedy*) Certainly, if the Board deem that they would want us to do that. We would want the proposal to come from the Board.

4. I had decided with the Committee that we would tackle this at the end but, given what you have said, Minister, we had better go straight to the heart of all this. What are the circumstances in which you think those additional four draft clauses would be added to the Bill during its passage through Parliament?

(*Ms Kennedy*) As we said in the debate that the DUP tabled last week, the Prime Minister and the Secretary of State have both made clear that we are looking to see acts of completion. That is a phrase that is currently in use. It would not be my intention here today to define those too clearly. Our resolve at this moment in time is to work towards a situation where the political parties in Northern Ireland can regain confidence that those who are engaged in the partnership here 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. It was largely as a result of that complete breakdown in confidence that we have ended up with the resulting suspension of the

Executive and 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. They are the ones whose actions have brought us to this point. 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. That is the objective. I know that sounds like a lot of weasel words but I am trying to be not too precise.

5. They sound like quite firm words to me. I am not trying to put words into your mouth but you would not be introducing these draft clauses into the Bill as it goes through Parliament in the next two or three months, whatever it is, without the situation having arisen here which would allow for the resumption of the Assembly?

(*Ms Kennedy*) That is right.

6. That would be the very least of the triggers you would need?

(*Ms Kennedy*) I would expect that that would be right. One of the key phrases that the Prime Minister used was that he said—and I quote him as accurately as I can recall—that the concept of Sinn Fein participating in the Policing Board whilst the Provisional IRA remained active was frankly—I am using the word "nonsense" but he used a stronger word. He said it was absurd. I hope that is a fairly clear statement of where the Government is.

7. Are there any other draft clauses in the pipeline which you might seek to add to the Bill as it goes through?

(*Ms Kennedy*) Not in the pipeline at the moment other than the amendment you referred to earlier. The Board is considering a request from the Chief Constable that he should be able to recruit experienced constables to fulfil particular roles and that is something which we are working on but we do not have ready at this stage.

Mr Clarke

8. Can I pick up on something you said, which was that the text for consideration would not be added until there were circumstances where the Assembly was back in place, but of course an act of completion could happen which could lead to the text being added before the Assembly was up and running, so in truthfulness it would not prevent the text being added if there was an act of completion and the Assembly was not reinstated?

(*Ms Kennedy*) I would not want to be too prescriptive. What I mean is, if it was quite clear that the political partners in Northern Ireland were going to be able to re-enter a power sharing Executive, then, so long as everybody clearly understood that, we would do that.

Chairman: That is what I was getting at.

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Mr Bailey

9. In his recent inspection report of the PSNI the HMI commented on the inadequate levels of devolvement of authority and accountability to district commanders and also the slow progress made towards local financial management. Do you think any of these draft proposals will do anything to improve these deficiencies?

(*Ms Kennedy*) I do not think so. I think those arrangements are internal to the police and are part of the Chief Constable's responsibilities in terms of his organisation and how he manages it. I thought that it was encouraging in Tom Constantine's report when he said, "Good progress is being made". I know that the district commanders, who have really only been in post since April, are keen to see the reforms flow through to them and to receive the budgetary responsibilities and I know that we look to the Chief Constable to move rapidly and progress that. I do not think there is anything in this Bill which will necessarily assist.

Mr Clarke

10. The amendments in Clause 4 regarding public meetings of the Board, the amendments in respect of the 28-day rule, are common sense and everybody can understand the circumstances in which the Board may wish to meet twice within a short period and therefore the 28-day rule is a nonsense, but the other amendment which reduces down the number of meetings in a year from 10 to eight seems at odds with that principle of public openness and accountability. Other than the fact that it was the Board's recommendation that led to that amendment, why does the Government think it is necessary to reduce the requirement for the Board to meet at least 10 times a year?

(*Ms Kennedy*) It obviously is not part of our intention to reduce the openness and accountability of the Board. There is a rigidity in the structures in the Police Act that requires the Board to meet every 28 days. The one point that was made to us was that every so often one of the months of the year does not have a 28 day in it.

Chairman: Oh, really? Which one?

Mr Pound

11. The Liverpool February.

(*Mr Masefield*) They meet on alternate Wednesdays and Thursdays as I understand it, so sometimes in February that will run into problems if it happens on that day..

Chairman

12. I was not being serious. I think everybody accepts the need for the amendment to the 28-day rule to enable that flexibility, but the other amendment is in respect of the reduction of meetings from ten to eight. That does not seem to be opening up public accountability or reducing the number of opportunities for the public to question and I just

wondered, other than the fact that the Board recommended that, what the Government's view was as to why we think that is necessary.

(*Ms Kennedy*) What we are talking about here is a minimum number of Board meetings. It has been our experience over the last year that certainly they have had at least one, probably more, special meetings, extraordinary meetings of the Board. They have dealt with some very big issues and have dealt with them, if I may say so, very well and in a very constructive and consensual way. We took the point from the Board that they have no intention of reducing their visibility and accountability to the public but, so long as they are demonstrating that they are not in any way seeking to lower their accountability, I felt it was proper to respond to their request to be allowed a degree more flexibility in how they manage their meetings, both public and private.

13. Could we say that publicly it could be seen that by saying we are going to meet eight times and not 10 we will lay ourselves open to people saying that this is less accountable?

(*Ms Kennedy*) I think potentially that criticism could be made.

(*Mr Masefield*) Mr McGrady will correct me if I am wrong, but to my recollection the month of February 2002 was one where there was not a Board public meeting. You had, as I recall, no less than three days of continuous sittings on the Omagh investigation and the two reports there. There was, certainly from my perspective, a very high level of transparency and there were public statements issued by the Board thereafter and so that was one month when you did not meet and then sometimes there is a summer break and I am conscious that they are not due to meet in January 2003. Over that 12 month period there could as it were have been just nine meetings, although more regularly I think they would expect to have 10 or indeed 11 and, as the Minister says, sometimes there are special meetings.

Mr McGrady: There was a special meeting yesterday which was called at 48 hours' notice.

Chairman

14. It needs to be made clear, if that is possible, to meet Mr Clark's questions, when all this gets to the public end, that this is very much a minimum.

(*Ms Kennedy*) Yes.

15. And that you are not expecting the Board to meet less often as a result of this change.

(*Ms Kennedy*) That is right.

Chairman: As long as that is properly explained it probably meets the objection.

Mr Clarke

16. Moving on to Clause 6, the grounds on which the Chief Constable can refer to the Secretary of State the decision of the Policing Board to hold an inquiry, the amendment within the Bill removes one of the grounds that the Chief Constable can appeal, which is where it would be likely to "prejudice the prevention or detection of crime or the apprehension

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or prosecution of offenders". That is removed. Why was it felt necessary to remove that particular grounds of appeal to the Secretary of State?

(Ms Kennedy) We felt that making this change brought the operation of the Board and their ability to hold inquiries more into line with the Patten recommendations. 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, so we felt that it was not necessary to have that qualifying clause in the powers that the Board had.

17. Is there any sense in which the ground that was there made it too easy at times for the Chief Constable to appeal because quite often there would be grounds where the detection of crime or apprehension of offenders could be prejudiced in any inquiry?

(Ms Kennedy) I do not think it would be fair to say that. We felt that 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.

Chairman

18. But it takes away the ability of the Chief Constable to ask for a referee if he genuinely feels that effective operation of his police force in catching criminals or getting evidence is being hindered by a decision which the Board may have taken for other reasons than that. It does not take away the Board's power. It merely allows the Chief Constable to say, "Hey, Secretary of State. Will you please look at this?". Is it helpful to take that power away? I am a little surprised that you should want to take it away from the Secretary of State who after all is the ultimate referee as long as we have a Secretary of State.

(Ms Kennedy) As I said at the outset, the main purposes of the Bill include strengthening the position of the Board and clarifying some of these issues. They cover the different roles that the Board face vis-a-vis the Chief Constable and the Secretary of State. This is one of those clauses that does that. It is quite clear in its intent and it does raise the status of the Board, I think.

(Mr Masefield) It does also reflect more fully, as the Government set out, the specific Patten recommendations where he referred to three categories of case where the Chief Constable should have the right to appeal to the Secretary of State and that was not one of them.

19. Forgive me because I did not realise this was in conflict with Patten. The Patten report intended the Board to have the untrammelled power to do this, not subject to any review or appeal?

(Mr Masefield) Might I quote directly from paragraph 6.22: "We recommend that the Policing Board should have the power to require the Chief Constable to report on any issue pertaining to the performance of his functions or those of the Police Service. The obligation to report should extend to

explaining operational decisions." Here is the part: "The grounds on which the Chief Constable might question this requirement should be strictly limited to issues such as those involving national security, sensitive personnel matters and cases before the courts." He then continues: "We recommend that, if there is a disagreement between the Board and the Chief Constable over where it is appropriate for a report to be provided on the particular matter, it should be for the Chief Constable to refer the question to the Secretary of State for a decision on whether the Board's requirements should stand."

Chairman: So the question is why was that not put into the legislation to start with, I suppose.

Mr Pound

20. Clause 7 caused great excitement, and I do love quorum changes. I understand that this actually incorporates the McGrady amendment which was originally resisted and in fact does reduce the quorum. Why?

(Ms Kennedy) It is not actually changing the quorum. It is changing the number of members of the Board who need to be present for a vote on whether an inquiry should take place to be valid or not.

Mr Pound: What is the difference between that and a quorum?

Chairman

21. Only for a vote, not for a meeting.

(Mr Masefield) The basic quorum is seven, set out separately in Schedule 1, for any meeting of the Board.

Mr Pound

22. And does that change?

(Ms Kennedy) No.

Chairman

23. But eight for a vote? It was 10.

(Ms Kennedy) Eight would need to be present for a vote.

(Mr Masefield) . . . and constitute a majority. So it might be seven against eight.

Mr Pound

24. For inquiries by the Board?

(Ms Kennedy) Yes. Not for general matters.

25. What was the rationale behind the quorum change for inquiries?

(Ms Kennedy) The original number that would need to be present to vote on whether an inquiry should take place was 10. We made the commitment that we would reduce the number to eight at Weston Park and it is directly as a result of that agreement at Weston Park that we are making this change.

26. Were there difficulties in a quorum of 10?

(Ms Kennedy) There were representations made to us very strongly that 10 was too high a barrier if you like for the Board to meet. Realistically, I could not

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imagine—well, it is dangerous to say that. 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.

27. So you are saying it was pragmatic rather than theoretical?

(Ms Kennedy) Yes.

Mr Robinson

28. I want to look at the issues relating to what was Clause 8 in the original documentation but which now is Clause 12 in relation to independent members. One change that you are proposing here is to place a requirement on the appointment of the independent members that they would, in as far as it is practicable, taken together with the elected representatives on the Board, be representative of the community in the district. Can I put propositions on two sides of that argument just to get your reaction to it? One is that you could end up having entirely single identity independent representatives if you were to carry that out in some areas. Is that good?

(Ms Kennedy) I do not think that is how we would envisage it working. We would envisage it having the opposite effect.

29. It is to be representative of the community and the district. If the community in the district is a single identity community, presumably therefore you would be putting independent members on who are representative of the community in the district which would be single identity representatives.

(Ms Kennedy) What we felt in making this change was that we wanted the Board to be responsible and to be required, as ministers are, when appointing to the Board to be seeking for that representativeness in appointing the independent members. It is a reflection of the current responsibility that lies with the Secretary of State when appointing the Board itself.

(Mr Masefield) Might I follow with two supplementary points? The first is that there is a similar provision in the existing Code of Practice that the Secretary of State published this August which does not have quite the same effect as primary legislation would have. Page 15 says: "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", and I think the Board took cognisance of that and, as I say, the Board themselves put forward the proposal to the ministers that this should perhaps be enshrined in the primary legislation next time round.

(Ms Kennedy) I think it bears repeating that appointments to the DPPs of independent members will still be on the basis of merit and it will still be in accordance with the requirements that we face elsewhere in England and Wales in terms of public appointments, so the same appointments procedures apply.

30. This is a provision which is similar to the provision that was on the former body that operated the police in Northern Ireland before the Police

Board came in. There was a requirement for the Police Authority to be representative of the community as a whole, was there not?

(Mr Masefield) In general terms. I am not as familiar with the 1998 Act.

31. It was not in general terms; it was in precise terms, but the Government flouted that. They ignored it. I am wondering what force this is going to have when the Government did not operate it itself when they had the votes in Mo Mowlam's time and Peter Mandelson's time. Both of them kept off Democratic Unionist representatives from the Police Authority in spite of that same requirement, so what force will this one have if two Secretaries of State have flouted it in the past?

(Ms Kennedy) It is a statutory requirement placed upon the Board.

32. As was the Police Authority Bill.

(Ms Kennedy) Presumably you will hold the board to account should it flout it in the way that you have suggested was done before.

Mr Robinson: It was a statutory responsibility on the Secretary of State before and two Secretaries of State did not keep the law as stated in these same terms. If I can take the other side of that argument in relation to the appointment of independent—

Chairman

33. Just before you do that, as that is an assertion that has been made could we ask the Northern Ireland Office to answer that in writing at some stage?

(Ms Kennedy) I will certainly look into that.

(Mr Masefield) Or, if it helps you, Chairman, I could quote from the 1998 Act.

34. If we can clear it up now but if an allegation has been made that the Secretary of State has flouted a statutory requirement I think the Committee needs to have a formal answer. If you can give us that now verbally that is another matter.

(Ms Kennedy) I think I would like to consider it and write to you.

Chairman: I think you would like that, would you not, Mr Robinson?

Mr Robinson

35. Yes, that would be very interesting. The other aspect is that the purpose of having independent members, one would have thought, would have been entirely relating to the skills that those individuals might be bringing to the district policing partnership. Yet to some extent you are using them as top-up fodder to balance your figures out because it seems that you are placing almost a priority on getting the balances right in terms of community representation and that could have a detrimental effect on getting the right people who have skills and expertise that they could bring to assist the policing partnership.

(Ms Kennedy) If you are talking about how we select the independent members, the Board will be required, as we say in this clause, to take account of representativeness but the actual appointments will still be drawn from a pool all of whom will have had to meet the merit tests which will be applied. The Board will be able to select from the pool of

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independent people those whom they can appoint to the DPP. The objective is to achieve a pool which will be able to be representative and at the same time meet the merit tests that will apply.

36. Yes, but as a Minister you know the difficulties in that. I can remember Jeremy Hanley once telling me the difficulty in appointing the Sports Council. He ended up having to look for a female wrestler who was a Catholic living in North Antrim or something like that. It gets down to a very difficult task if you are trying to match all of the requirements together. There seems to be now a statutory requirement for representation to be proportionate and if that becomes a priority it seems to me that it is likely that you will be picking somebody because of their political or religious views rather than because of the expertise or skills that they can bring to the partnership.

(Ms Kennedy) I will just draw your attention to the clause itself which does say that the Board “shall so far as practicable . . .”, which I think is sufficient to allow the Board to take into account factors such as those which you have just suggested.

Mr Pound

37. Looking at some of the block nominations made by district councils, there were very few Catholic wrestlers from North Antrim in them and they tended to be male nominees *en bloc*. Are you aware of that? Is that just my casual reading of the list of nominations I see or is that a problem and could that be why you have this situation where the additional members or the top-ups have to be women because otherwise, God forbid, you might be accused of flouting statute at some time in the future, which would not do?

(Ms Kennedy) It reflects the nature of the politics in Northern Ireland, that the majority of the political representatives that are being nominated are men.

38. But do you still get these block nominations?

(Ms Kennedy) That is what the process is. The independents allow that flexibility to make sure that the appointments that are made do produce a DPP which is as far as you can possibly make it representative of the community it is serving. The same arguments could have been used about the Board.

Chairman

39. Clause 14 allows appointments to be made to the PSNI for a fixed term of up to three years for ranks above constable and below senior officer. If people cannot be either constables or senior ranks then presumably they are sergeants and inspectors and chief inspectors. Is this because there is at present a deficiency in the strength at those ranks in the PSNI or does it seek to address the poor record of civilianisation which is frequently reported by HMI in his inspection reports?

(Ms Kennedy) I think there are probably historical reasons why civilianisation has not progressed as far within the PSNI as it will be seen to have done

elsewhere in England and Wales. We are talking here about fixed term appointments for superintendent ranks and above.

40. No. It seems to be sergeants, inspectors, chief inspectors, above constable and below senior officer. I do not know how you define a senior officer.

(Mr Masefield) That is at ACC level and above where the Policing Board deals with the nominations.

41. So it is sergeants, inspectors, chief inspectors, superintendents, chief superintendents?

(Ms Kennedy) Yes.

(Mr Masefield) This is partly to provide the facilitation to allow us to carry forward what was again another undertaking from a recommendation in Patten to allow for officers from the Garda Síochána or other police forces to come in on a secondment basis with policing powers because at the moment there is a rather obscure provision in the 1998 Act which prevents us from appointing below superintendent.

42. We thought it might be that and it is not actually in the print. Okay. That is the main motivation, is it?

(Ms Kennedy) Yes.

Mr Beggs

43. Looking at the Police Ombudsman, Clause 15 would give the Ombudsman a new power to investigate police practices or policies. Under the 1998 Act, the Ombudsman “may make a report . . . on any matter”. It also introduces a new test—that the practice or policy is “giving rise to significant public concern”. This will replace the earlier test that the policy or practice “should, in the opinion of the Ombudsman, be drawn to the attention of the Chief Constable and the Board.” This appears to increase the discretion of the Ombudsman to investigate but limits its exercise. This clause also enables the Chief Constable, if he does not want to supply information to the Ombudsman, to refer the issue to the Secretary of State for decision. What is the rationale for replacing section 61A of the Police (Northern Ireland) Act 1998?

(Ms Kennedy) You are talking about the change between “research” and “investigate”. There are obvious similarities between “research” and “investigate” but when you are talking about a policing context the term “investigate” has a stronger connotation. “Research” implies a more general look at broader issues, if you like, whereas “investigate” would be a more detailed consideration of a particular issue. The differences are not great and I do not think we would necessarily be overly concerned that her powers were restricted. However, representations were made to us and we did agree at Weston Park that we would make these changes. I should say that I am aware that the Ombudsman’s office have concerns about these proposals and we are giving very detailed further consideration to these clauses, so I think there is some work yet to be done on this before we finally settle on exactly what form this clause should take.

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44. Is there any reason why this power to investigate should not be confined to matters arising after the enactment of this new Bill, in other words it should be made retrospective?

(*Ms Kennedy*) It is not our intention that the power to investigate should be retrospective and we are considering whether that should be made explicit in the text of the Bill.

45. What was the significance of the term “investigate” in the draft amendment given its absence in the section it seeks to replace? Does the requirement for “significant public concern” limit the Ombudsman’s discretion?

(*Ms Kennedy*) Again, this is an area that I know the Ombudsman’s office are particularly concerned about. What I would say to you, Mr Beggs, is that we are looking at this issue to see whether we can reflect in the Bill as it is considered by Parliament more closely your concerns and the concerns that are being expressed at this time.

46. Given that the legislation has been passed at Westminster which includes the Police Ombudsman within the remit of the new Chief Inspector of Criminal Justice, the Minister has confirmed that the Ombudsman will not have retrospective investigative powers. Will the Chief Inspector of Criminal Justice have retrospective investigative powers?

(*Ms Kennedy*) The remit of the Criminal Justice Inspectorate will be to monitor the performance and effectiveness of the Office as opposed to the conduct of any particular investigation, so it is more like a public audit, if you like, of the performance of the office as measured against the targets that are set for that office rather than it being a questioning role as to how the office has conducted a particular investigation.

Mr McGrady

47. I see comments and observations and interpretations have been put in this amendment which indicate that, while it appears that the powers of the Ombudsman are explained or even extended, the reality of the sub-clause qualifications means that they are in fact restricted. Have you any comments to make on that?

(*Ms Kennedy*) We would not share the view that they are being restricted. You use the expression that the reality is that they are being restricted. I am not convinced that that is the case. However, I am concerned. Those representations have been made strongly to us and I know that the Ombudsman has some concerns which we are looking at to see if we can address those concerns in the early consideration of this Bill in Parliament.

48. I am trying to draw from my memory, which I have not referred to for four years now, on what I think were similar qualifications regarding certain restrictions under the Data Protection Act way back, is that right, and that they are now being introduced to restrict the ambit or scope of the Ombudsman?

(*Ms Kennedy*) We took the view that strengthening the Ombudsman’s powers, changing from research to investigate policies and practices, gave the Ombudsman wider scope than the office has at the moment, and that by doing that it was logical and

reasonable for the Government to build in the safeguards that are in the published clauses. We have had representations about the perceived effect of those clauses and, as you said, there is a perception and a case being made that by doing this we are reducing the powers of the Ombudsman, which was not our intention. Given that that is a representation that is being made, we are studying carefully this text to make sure that the effect of the new law does not run counter to what the Government’s intention would have been or indeed the commitment that we gave at Weston Park.

Mr Robinson

49. My question is not directly on this but it does flow directly from the commitments made at Weston Park. I am wondering to what extent or in what detail commitments were made. How much flexibility do you have in terms of the way the Bill is presented to make change to it in that it is implementing commitments that have already been made? Were the commitments in general principle or were they in the detail of the clauses?

(*Ms Kennedy*) I am not sure I understand the question.

50. In your introductory remarks you said that these clauses were implementing commitments made at Weston Park. What I am wanting to know is were the commitments that were made at Weston Park on general principle changes that were being made or were they specific clauses?

(*Ms Kennedy*) Some of it was detail. For example, the commitment to change the phrase “personal” to “personnel” was a specific and detailed commitment that was given at Weston Park, so there is a mixture of general commitments that we are carrying through but all of the work that we are doing here in this Bill is contained in the Implementation Plan. What you would have seen in the Implementation Plan was a commitment that we would consider certain issues to see whether it was necessary to make changes and we have had that consideration. It was one of the reasons for having the consultation.

51. We could be wasting our time asking for changes to be made if you are already committed to making them in a specific form.

(*Ms Kennedy*) If the Committee came to a view and made recommendations that were relevant to the legislation, we would want to hear what those recommendations were.

52. But you would not go back on a commitment, would you?

(*Mr Masefield*) To answer that another way—

Chairman

53. With difficulty, I think is probably the answer you are looking for.

(*Ms Kennedy*) Yes, it would be difficult, but if you made a proposal that was so evidently sensible that parties in Northern Ireland could see the sense of it then it would be less difficult. As things stand at the moment the fact is that we did make commitments. We are seeking to honour those commitments and that is what this piece of legislation is really about.

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[Continued

Mr Clarke

54. Could I leave a technical question with you in terms of the Bill? In Schedule 2 of the Bill there are references to taking of fingerprints and the taking of non-intimate samples from individuals. We have evidence from FSNI and others about the possible future use of civilian staff and others for the collection of data. The Bill states that these can be taken without the appropriate consent only by a constable. Could I ask you why we are restricting the ability to take fingerprints just to that one rank? In other words, it could not be a sergeant or it could not be a civilian. What is special about a constable?

(*Ms Salters*) The powers of a constable are what all police officers have. You get your constabulary powers when you join as a constable and you still have them as you progress up through the ranks up to that of Chief Constable.

55. But that would still disbar a civilian.

(*Ms Salters*) Yes.

(*Ms Kennedy*) Which part of the Schedule?

56. It is Schedule 2.

(*Mr Masefield*) It may be helpful if I said that broadly these provisions mirror those of the Police Reform Act 2002 and I think we would need to go back and look at whether we have exactly read that across here. I think it would be unusual in the Northern Ireland context for the PSNI to be taking civilianisation faster forward than in England and Wales on the basis of HMI's report.

57. I am not chasing a direct answer. I just ask the Minister to consider those possibilities.

(*Ms Salters*) There are quite a lot of complex details in this that need to be considered together—we can provide clarification if that would be helpful.

Chairman

58. I have one question on the text for consideration so that we can get the facts out, and that is the draft clause j026 which talks about disqualification and that the ban will therefore lapse (in the new draft) five years after release. What is the earliest date at which people released under the Good Friday Agreement could be appointed? When were the first releases?

(*Mr Masefield*) They were in 1998 so it would be 2003.

59. So it will be next year?

(*Ms Kennedy*) Yes.

60. Therefore almost immediately after this was passed?

(*Ms Kennedy*) Yes.

61. In the declaration against terrorism, draft clause j006, is the requirement that independent members should have to make the same declaration as elected members. Is this just tidying up, an omission from the 2000 Act, or is there more significance to it than that?

(*Ms Kennedy*) We saw it in the context of removing the disqualification from independent members being appointed to DPPs and if we were to remove that disqualification then we felt that it was quite sensible to have the same safeguards if you like

applied to independent members of the DPP as would apply to their political colleagues around the table.

Chairman: The last one, which Mr Robinson is interested in, is the draft clause about Belfast.

Mr Robinson

62. Presumably when originally the legislation was considered the division of Belfast into four sub-groups was given considerable thought. Where did the impetus for change come from to make the changes to the sub-groups under this new legislation?

(*Ms Kennedy*) Again, we undertook to review this as a result of the discussions at Weston Park.

(*Ms Salters*) The undertaking that the Government had made was to consider whether the powers currently available to the sub-groups were appropriate or whether they should be extended. In considering the implications of possibly extending the powers of the sub-groups we needed to consider also issues of how they would be structured and so on, and their relationship with the main Belfast DPP. The legislation at the moment requires all the members of sub-groups to be also members of the DPP. Because you can only have 19 members of a DPP the poor souls who are serving on that would be required to serve on two, perhaps three, sub-groups as well as the DPP, so it was looking at ways of spreading the load better.

63. And that is the only practical implication of it?

(*Ms Kennedy*) I think so. Most of the detail of this was working through the practical effect of changing the sub-groups.

(*Ms Salters*) And a lot of the same checks and balances that exist for DPPs would be replicated to the sub-groups.

(*Ms Kennedy*) There are not any other motives for making these particular detailed changes. They have arisen directly out of seeking to draft a piece of legislation that would work in the context of the earlier Act.

64. Yes, but, taken along with the clause on the appointment of independent members, it could make quite a remarkable change in what the membership would be of the sub-groups.

(*Ms Kennedy*) How would you see that change taking shape?

65. Presumably if you are putting independent members on to the sub-groups they have to abide by the reflection, do they not, of the community in the area?

(*Mr Masefield*) That is one of the proposals in the Schedule.

66. Let us take an example, West Belfast perhaps. I presume that that means that almost all of the independent members will be Nationalist or Republican.

(*Ms Kennedy*) Almost all, potentially. I think that is probably right.

67. And that would not have been the case if the membership had been simply taken from the Board?

(*Mr Masefield*) Not necessarily. The Board would have had a certain amount of flexibility in how it chose to allocate the membership of the central DPP

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[Mr Robinson Cont]

to the individual sub-groups, save that there was a requirement for there to be at least six DPP members on each of the sub-groups—

68. It would be a very different composition.

(*Mr Masefield*) There are, as we were saying earlier, one or two checks and balances specifically to make sure that no particular group would monopolise a sub-group, for example, there is a requirement for rotating chairmen.

Chairman

69. But there is little point in the chairmen rotating if they all have the same sympathies on the sub-group because they are reflecting 100% of the population where they live. That is Mr Robinson's point.

(*Ms Kennedy*) Except that the rotation would be between political parties, so there would need to be representation on the sub-group from certainly the four main political parties.

70. On each sub-group?

(*Ms Kennedy*) On each sub-group.

Mr Robinson

71. From the political parties and then the independents?

(*Ms Kennedy*) Yes.

72. If it is the independents topping it up to make it representative it would be almost entirely Republican in West Belfast.

(*Ms Kennedy*) It is not going to be the easiest chairmanship in certain circumstances.

Chairman: You do not need to tell me that, in a minority of one here. Minister, thank you very much indeed for once again being very frank and helpful. I hope we can go on meeting like this without somebody noticing.

Memorandum submitted by the Northern Ireland Office

I welcomed the opportunity of meeting the Committee on 12 December to assist in your consideration of the Police (Northern Ireland) Bill. I undertook, at that time, to consider issues raised by Peter Robinson and Tony Clarke, and to respond in writing. I am also responding to a number of other matters on which you have sought clarification before the session on 9 January.

While I cannot answer for the decisions of previous administrations, Peter Robinson raised concerns regarding the appointment of members of the former Police Authority. I understand that on the last reconstitution, the complete process was conducted fully in accordance with the guidance issued by the Commissioner for Public Appointments for Northern Ireland. The first stage involved consultation with the Police Authority on the identification of the main skills, competences and qualities that would be required of members. This was followed by a shortlisting exercise when each applicant's skills and competences required were objectively assessed. This was validated by the Advisory Panel which had an element independent of both the NIO and PANI.

The interview stage completed the process when each candidate was tested on their possession of the competences required and those who performed best were subsequently appointed by the then Secretary of State, Dr Mowlam.

You will be aware that the Secretary of State, in the exercise of her powers of appointment, was specifically prevented from discrimination on ground of religious belief or political opinion by section 19 of the Northern Ireland Constitution Act 1973.

Tony Clarke asked whether amendments to the Police Evidence (Northern Ireland) Order 1989 outlined in Schedule 2 of the Bill indicated that the taking of fingerprints and non intimate samples from individuals without consent could only be done by a constable.

The purpose of paragraphs 3 and 6 of Schedule 2 to the Bill is to amend Articles 55A(6) and 64A(3) of the PACE (NI) Order by taking out the provisions enabling the Chief Constable to designate persons to carry out a search or examination for an identifying mark or to take photographs of such a mark (in the case of paragraph 3) or to photograph detainees (in the case of paragraph 6). The Constable no longer requires these powers to designate given the wider powers introduced by clause 20 of and Schedule 1 to the Bill. Paragraphs 12 and 20 respectively of Schedule 1 provide for the powers of a constable in the Articles of the PACE (NI) Order referred to above to be conferred on designated police support staff.

I turn now to the issues on which you have requested clarification prior to our meeting on 9 January:

Clause 1: Consultation with the Board

You queried as to what would happen if the Secretary of State was unable to secure the Board's agreement to the long term objectives or to a code of practice.

Clause 1 amends sections 24 and 27 of the 2000 Act, which require the Secretary of State to consult the Board 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. Clause 1(1) and 1(2) amends

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[Continued

these provisions to provide that the Secretary of State must consult the Board with a view to reaching 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 remain unchanged.)

The Government gave a commitment in the updated Implementation Plan to clarify the relationship between the Secretary of State and the Board in setting objectives for the Police Service. Clauses 1, 2 and 16 of the Bill fulfil this commitment. 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.

Clause 6 (the numbering is that of the Bill as introduced) Performance Summaries

You asked whether the proposed new subsection 28 (5A) creates a requirement for a "performance summary" in addition to the existing requirement for a "performance plan" as provided for in Section 28(4) of the 2000 Act.

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.

Clause 8: Reports of the Chief Constable

I can advise that the Chief Constable has not made any referrals to the Secretary of State under section 59 (3) (a) to (d) of the Police (Northern Ireland) Act 2000, nor has the Board requested a report under section 59.

Clause 14: Councils' powers

Paragraphs 10A and 10B are being inserted into Schedule 3 to the 2000 Act to give District Councils power to insure against accidents to a member of a DPP while engaged on DPP business, and to indemnify a member of a DPP while engaged on DPP business for liability incurred in relation to DPP business. One or two councils had raised concern that there might be no legal basis for indemnifying independent members and indeed councilors appointed to DPPs.

This clause is intended to remove the uncertainty. This provision relates solely to the particular circumstances of district councils and DPPs.

Clause 15: Core Policing Principles

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." Section 32 of the 2000 Act already sets out the general duties of every officer, such as the protection of life and property; this amendment puts policing with the community at the heart of policing by making it clear that it is a core policing principle and fulfils our commitment as outlined in the update Implementation Plan. It is also consistent with the recent production by PSNI of a Policing with the Community Implementation Plan to take forward these Patten recommendations.

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Clause 16: Chief Constable's Functions

You asked whether there have ever been inconsistencies between the Board's policing plan and the Secretary of State's code of practice.

As I outlined earlier, clauses 1, 2 and 16 implement the commitment in the updated Implementation Plan to clarify the relationship between the Secretary of State and the Board in setting objectives for the Police Service. We do not anticipate inconsistencies in the future but this provision will clarify the position should that occur. Agreement has just been reached with the Board and the Chief Constable on the revised finance instructions, elements of which constitute a code of practice under section 27.

Clause 17: Provision of information to Board

You enquired as to what test is to be applied to determine whether a requirement by the Board is "reasonable". I consider that the focus would need to be on how a "reasonable Board" would act. That is, the request for information one which a Board properly directing itself as to its functions, taking into account all relevant matters and ignoring irrelevant ones, would make? Of course, each request would be considered on its merits.

I hope this provides the clarification you sought; if not, I shall be only too pleased to answer any further queries on these points at our meeting on 9 January.

5 January 2003

THURSDAY 9 JANUARY 2003

Members present:

Mr Michael Mates, in the Chair

Mr Harry Barnes
Mr Roy Beggs
Mr Stephen McCabe

The Reverend Martin Smyth
Mr Bill Tynan

Examination of Witnesses

JANE KENNEDY, a Member of the House, Minister of State, MR ROBIN MASEFIELD, Head, Patten Action Team, MS CLARE SALTERS, Police (NI) Bill team leader, MR STEVEN MCCOURT, member of the Bill team, Northern Ireland Office, examined.

Chairman

73. Good morning. Thank you very much for coming to help us with the Policing Bill. In your last evidence session you noted that the proposed measures in the Bill had the effect of giving the Chief Constable greater flexibility in his deployment of staff and raising the status of the Board. Is this part of a general desire you have to let go of some of the responsibilities for policing which have been yours during all the Troubles?

(Jane Kennedy) That thought has not formed any of the thinking we have undergone when we have been structuring these reforms. I assume you are referring to the civilianisation proposals. The greater flexibility for the Chief Constable has come directly from his representations to us and the discussions that have been taking place with the Board are about his concern that more police officers could be deployed to front-line policing than is currently the case in Northern Ireland. In bringing that to us he was largely informed by his experience in England and a number of the proposals that we have in this Bill bring us into line with what occurs already in England. So, no, there was no bigger picture.

Chairman: It would have been very understandable if there had been. That leads us directly on to a question that the Reverend Martin Smyth wanted to put to you.

The Reverend Martin Smyth

74. I understand the reason why Mr Orde wanted the ability to redeploy, but does that redeployment cover civilian staff and not police staff? I ask that question in the context of the first tranche of employment for civilian staff who were offered jobs and then they were withdrawn on the basis of the interpretation of the Police Act. Something like 270 people applied but 26 were from the Roman Catholic community. According to the interpretation put upon this now they could only employ 52. I know of one person in particular, a former serving member of the Royal Air Force for 12 years, and he had been cleared and he was actually in possession of the driving pass but it was withdrawn and then a letter was sent to say unfortunately the Chief Constable could not honour the terms of employment. Has this been a misreading of the Act or an extension, which

was never intended originally because it is dealing with civilian staff, to allow the employment of police officers who come under the Patten proposals?

(Jane Kennedy) I am obviously not aware of the particular case that you raise. I will ask Robin if he will bring up any points from the question you ask that I might miss. I am not entirely clear of the thrust of the question, is it the impact of the 50:50 recruitment procedures on the recruitment of police officers and whether they will apply to civilian staff, is that the thrust of the question?

75. Yes.

(Jane Kennedy) They do apply to the recruitment of civilian staff as it stands at the moment within the Police Service of Northern Ireland. Even the support staff in police stations come under the 50:50 recruitment rules, but the rules are relatively flexible and it is very much up to the police how they operate them. For example, if you were looking for administrative staff, the police have the ability to recruit across the whole of Northern Ireland and therefore the impact of 50:50 is not as difficult as it might be were they seeking to recruit 50:50 in a neighbourhood where the other community dominated.

76. I can understand the problem and the fact that it would have been advertised throughout Northern Ireland, but it does seem to me, whilst we are attempting to put more police officers on the beat and at a time when they are undermanned and over-stretched, perhaps a temporary mis-judgement which could be rectified in due course.

(Jane Kennedy) I hear what you say. I would just say that the greatest drag on police recruitment has been the sheer physical capacity of the college, it has not been the impact of 50:50.

77. This is civilian staff.

(Jane Kennedy) I understand that.

78. We are not dealing with the college, that would be another issue. We are dealing specifically with the fact that there are people available and qualified to do that work which police officers have been doing behind the scenes but it cannot necessarily be done by police officers and yet we cannot release police officers to do policing work because of the extension of that interpretation to deal with civilian staff.

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[Continued

[The Reverend Martin Smyth Cont]

(Jane Kennedy) I hear what you say. It is a little early yet to draw that conclusion from the work. Grafton Recruitment is an agency that has been enlisted to undertake this task.

79. I am drawing my conclusions from a copy of a letter which I have in my office.

(Mr Masefield) Grafton were appointed last September and it is fairly early stages yet. There have been seven competitions run since their appointment, none of them are high volume campaigns, but I will come back to that in a second. As I understand it, with several so far it has been possible to appoint all of the requisite number of civilian staff on the 50:50 basis as section 44 of the 2000 Act requires. I accept the Chief Constable was referring to the campaign for administrative assistants that was run in the summer prior to the appointment of Grafton when only 52 were appointed, but that has been an area where also in the past the police have found it difficult to recruit staff, particularly at times of comparatively high employment levels.

Chairman

80. So you think that is an one-off problem?

(Mr Masefield) I would hope it certainly would not occur to the same degree next time round. The police anticipate going out in the next few months, January, February or March, and recruiting perhaps the sort of clerical support necessary and police station reception staff. When we get into those two phases we will have a clearer picture as to whether the impact of Grafton allied to the promotional advertising which will be fairly unprecedented and an outreach strategy allied to the use of Grafton, something like 19 local offices across Northern Ireland, will bear fruit in the way that Patten had in mind.

(Jane Kennedy) I take the point that the Reverend Smyth makes. If what you are saying is right then it ought to be an area of concern. I have confidence in the relationship that exists between the NIO and the Chief Constable, that were he to form the view that there were problems in his ability to recruit and that that was impacting on his ability to function then he would very quickly draw them to our attention.

The Reverend Martin Smyth

81. I have raised this interpretation with the appointing authority, I am waiting for their response, but I can let the Minister have a copy of the letter which clearly refers to the fact that the Chief Constable is not able to offer that appointment.

(Jane Kennedy) I would be grateful.

Chairman

82. As far as the district policing partnerships are concerned, is it absolutely necessary to set in stone the required composition of the DPPs including their independent members?

(Jane Kennedy) In terms of the numbers?

83. Yes. It is setting the formula which seems to be very rigid indeed. What is the rationale behind it?

(Jane Kennedy) It is set down in the Act. It is a clear recommendation of the Patten Report.

84. But does it not fly in the face of the need for negotiation within communities about the way forward in terms of local preferences and skills and experience and so on? I think the thrust of what I am trying to say is is it really necessary to be so rigid at the top and the centre and not give local areas, which have vastly different forms of population, the flexibility to work this out for themselves?

(Mr Masefield) At least one response to your question is that the Act did provide flexibility for district councils who play a leading role in setting up district policing partnerships for which they are responsible to determine the size of it, whether they should be 15, 17 or 19, indeed in line with paragraph 6.26 of the Patten Report. While I think a slight majority of the 26 district councils, it may be 14 have opted for 19 members, some have gone for 15 and some have gone for 17. Moyle is one that has gone for 15 and that being one of the comparatively smaller district councils. That is one level of flexibility. Secondly, it is the council that takes the leading role in the initial selection process of the candidates for independent membership who come forward and then, under the Act and the code produced by the Secretary of State last August on the appointment of independent members, they will forward to the Policing Board at least twice the number of potential applicants for the posts available to independent member level and that could be a different number depending on the overall size of the DPP.

(Jane Kennedy) There is a degree of flexibility. There is not a complete prescription on what size the DPPs should be overall. The Act does require so far as is reasonably practical that the political appointees should reflect the political make up of the local council.

(Mr Masefield) And then the code makes the same point for the Policing Board. When they come to consider the recommendations, those who are considered potentially appointable by the council, as those names come forward the Board's panel has a particular responsibility to ensure that the candidates are appointable and that those selected are representative of the community and the council area. In doing so the Board's panel would wish to reflect on the composition of the council members appointed to the DPP.

Mr Tynan

85. The Minister's letter of 5 January notes that in the case of appointments to the former Police Authority, while the law required those appointed to be representative of the communities, the formal test for the candidates' fitness for appointment dealt instead with skills and competencies for the job. Are you aware of any instances where the requirements for appropriate skills and the requirements to represent the community conflicted with each other?

(Jane Kennedy) No is the short answer to the question.

86. Given that the requirements for the appointment to the Police Board and the DPPs are broadly similar to those set for the former Police Authority in respect of community representation,

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[Continued

[Mr Tynan Cont]

might it not be more appropriate in this case also to stress the need for a specific skills base as a prerequisite of community representation?

(*Jane Kennedy*) The political representatives will bring community representation with them, that is inevitable and obviously is one of the reasons for having local councillors on the DPPs, but an independent member would be expected to bring with them a wealth of other skills and experience. What you are saying is should we make a certain degree of skill a prerequisite, is it?

(*Mr Masefield*) If I might quote from our published code. Our published code that the Secretary of State produced last August does set out eligibility criteria against a person's specification for independent members and that has two skills that are seen as essential. One is demonstrable interest in the local community, community safety or policing issues and the other is residence or demonstrating a close connection with the council area and then there are four additional areas, desirable competence, the ability to think and exercise sound judgement, experience of working in a team, presenting information clearly and logically and experience of working with others and maintaining networks, and that has formed the basis for the information packs that were sent out to all those who had an interest in applying to be independent members of DPPs and all of the 1,480 who did apply will have received that and will have been tested against the criteria.

87. The short answer you have given is that you see no conflict in that, they represent the community and having the appropriate skills is not a concern that you have. Can I go on to the flexibility of composition in respect of independent members. Can there be more flexibility in that respect? I am saying why cannot there be more flexibility as regards the composition in respect of independent members for appropriate powers of oversight and intervention by local councils and the Board. It is a matter that refers to the community consultation and input that seemed to contain some seeds of discontent and it is really in relation to that I am asking it. The Minister did say, "For policing to be effective at its heart . . . must command the support and co-operation of all sections of the community".

(*Jane Kennedy*) The Patten Report, which is what we implemented in the Police Act of 2000 and we are seeking to follow through that to make sure that we are as close to the Patten Report as we can be with this piece of legislation today, recommended a degree of flexibility in terms of the overall size of the district policing partnerships and then laid down, given the overall size, what the proportion of elected members on that Policing Board should be. We do not think it is necessary at this stage to introduce any greater degree of flexibility in the make up of the DPPs. We think there is sufficient flexibility as it stands for the councils and the Board to be able to create a DPP which is reflective of the community that it will be representing and the way that it will hold the police to account.

88. So you think there is sufficient flexibility there to allow intervention by the local council and the Board as regards the independent members?

(*Jane Kennedy*) In terms of the appointment of the independent members?

89. Yes.

(*Jane Kennedy*) The appointments process will have as one of its objectives arriving at a DPP in a locality that reflects the community that it will be working for. So the answer is yes we do believe there is sufficient flexibility.

90. Is the best way to achieve viable DPPs to leave open the composition issue as a matter to be resolved by each local council in consultation with the Board?

(*Jane Kennedy*) I think that is the right way to do it, yes.

Mr Tynan: That solves my problem!

Chairman: Let us turn to the Ombudsman.

The Reverend Martin Smyth

91. On your last appearance before the Committee you told us that it was not the Government's intention that the Ombudsman's power to investigate should be retrospective. Does this intention change in any way the Ombudsman's present ability to deal with complaints about matters which precede this legislation?

(*Jane Kennedy*) This Bill does not deal with the power of the Ombudsman to investigate complaints against police conduct, it is completely silent on that. However, it does deal with the ability of the Police Ombudsman to investigate police policies and practice and you are quite right, there was concern about whether we were opening up the possibility for the Ombudsman to investigate previous policies and practice. We have acknowledged that is a concern and it is a valid concern and as a consequence one of the Government amendments that was debated in the Lords yesterday introduced the word "current" into the clause that extends this power, so it makes it absolutely specific in the legislation, it is amendment 23.

Chairman

92. So that has now been made explicit in the Bill?

(*Jane Kennedy*) Yes.

Mr Barnes

93. I do not know whether this is another matter that has been made explicit in the Lords, but I am going to ask about the Police Ombudsman as well. The last time you appeared before us you suggested that the Ombudsman's office had concerns that the provisions of clause 11 might restrict her powers. You said, "there is some work yet to be done . . . before we finally settle on exactly what form this clause should take." I was wondering whether there had been any developments on that, particularly about the section that says that the Ombudsman's investigations are in areas where there are reasons to believe that the practice of policy has given rise to significant public concern, and there is a question as to whether significant public concern unduly restricts the Ombudsman's role.

(*Jane Kennedy*) We have tabled amendments in the Lords, 23 through to 26, 30 and 31 and to clause 11 to deal with these concerns. We tabled those before the Christmas recess. Some of them have already

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been dealt with. What they broadly do is remove the barrier that the Ombudsman felt we were placing in the office's way to have access to information to enable the office to conduct an inquiry into current policy and procedure, but we have retained existing legislative safeguards relating to inappropriate disclosure. What we believed was the root of the concern was the possibility that there might be inappropriate disclosure of sensitive information into the public domain as a result of an inquiry or an investigation under this new power. The Ombudsman clearly felt that it was not necessary to have the safeguards written in the way in which they were in the previous clause and therefore we have changed that by removing the barrier but retaining other safeguards which we all felt achieved the same effect but without placing barriers that she felt were unnecessary. We also have clarified that the power to investigate relates to current policies and practices, which is what I have just referred to, and we have made clear that the Ombudsman is not expected to investigate policies and practices dealing with conduct that fall within the remit of the Investigatory Powers Tribunal. Basically the RIPA regulations and complaints arising under the RIPA regulations, which is the Regulation of Investigatory Powers Act, are dealt with by a different tribunal and we have made that explicit and the Ombudsman is satisfied that that is an appropriate way to provide a safeguard. We believe that is a workable solution to what was a very strong concern that was expressed to us. These changes have been welcomed in principle by the Ombudsman and I believe they not only satisfy our desire to make sure that the office was enabled to function in the way that we sought to achieve in the first place but at the same time we retained the safeguards that we believed were necessary for sensitive information in the way that I have just described, ie anything that might arise under the RIPA regulations.

(Ms Salters) Could I pick up your specific question about whether significant public concern unduly restricts the Ombudsman's role which the Ombudsman had expressed a concern about. Amendment 24, which was debated in the Lords yesterday, changed the hurdle from "significant public concern" to it being "in the public interest" that an investigation be conducted. The Ombudsman felt that was a more appropriate hurdle to set and we felt it satisfied the Patten recommendation that investigations should happen only where the issues were perceived to give rise to difficulties.

94. So a significant change to the previous position?

(Ms Salters) Yes.

Mr McCabe

95. I hope you will forgive me if I am being a bit slow here, but I am just trying to work out how this might operate in practice. I can see what you are trying to achieve. I guess everybody would want to avoid the Ombudsman's office becoming a bit of a political football ground. I am just wondering what happens if the Ombudsman believes that he/she has powers to investigate a particular area and then someone else decides that perhaps the powers do not

extend into that area? How will that be resolved and how will we avoid the situation where it will appear the Ombudsman announces an investigation and then it is stopped by someone else, which I would imagine would be ripe territory for media exploitation?

(Jane Kennedy) I think the debate that we have had with the Ombudsman's office and with the PSNI and other agencies over these last few weeks following the publication of the Bill and the debate that there has been has clarified in everybody's minds where the dividing line falls and it is broadly based upon current practice. The Ombudsman's office would routinely refer to the tribunal that operates under the RIPA regulations complaints that come to her office perhaps about the handling of a covert human source or complaints that technical information may have been received unlawfully and so on and those complaints are automatically already relayed to this other tribunal. So we were satisfied, having gone over this area of concern, that there was a good working understanding between the different agencies about how this should operate and that the new legislation was more appropriate in current circumstances. It has been a useful process to go through really.

96. One of the fears up until now was that the Ombudsman may have retrospective powers that were not intended and that has been clarified. Are you saying you are absolutely certain there is no danger in the future of the Ombudsman believing he has powers and yourself or someone else having to tell them subsequently no, your powers do not extend into that area? That could not happen, is that what you are saying?

(Jane Kennedy) It would be rash of me to say it would never happen. It is always possible that a situation may develop, but in practice I do not believe it is likely the way things are working at the moment.

Mr Barnes

97. I want to move from the Ombudsman to Ian Paisley Junior, who is a member of the Police Board and he has written to the Committee stating that the Police Ombudsman's office is not formally accountable to any other body. Would you care to comment on this statement?

(Jane Kennedy) I am aware of the concerns that both Ian Paisley has made and others. The Police Federation too has made these recommendations to me. You may know that the criminal justice reforms have brought the Ombudsman's office under the remit of the criminal justice inspectorate and so an audit of that performance will be undertaken by a new inspectorate and that will also be inspecting the performance of the new Prosecution Service and other agencies that fall under the remit of that Act. As far as the accountability of the Ombudsman and redress where there would be a complaint of maladministration or an individual complaining that they had not been treated fairly, all I can say is that I appreciate that concerns have been expressed. Finding a formal redress mechanism for them has been more difficult for us to achieve. We have examined a number of options and we have discussed with a range of people what those options might be. There is currently a judicial review being taken by the

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[Continued

[Mr Barnes Cont]

Police Association on the handling of the Ombudsman's investigation into the Omagh bombing and the outcome of that could have a bearing on the way forward on this particular question. At this moment in time we have not resolved it. We will be interested in any ideas that may come forward out of your own investigation and your own considerations.

98. Have the options been discussed with Ian Paisley Junior because one of his complaints is that—and he is presumably talking about the DUP—“we have sought it on three separate occasions . . .” and at that stage they had not been responded to.

(*Mr Masefield*) He is referring on one of the occasions to the formal input from the DUP in the context of the review of policing arrangements and I believe the Minister met a DUP delegation on two occasions and that includes Ian Paisley Junior and there was indeed discussion on that and they have also met the Secretary of State subsequently.

(*Jane Kennedy*) Some of the issues that we will be discussing would be areas within Government within which we would be searching for solutions and needing to test ideas across Government before bringing them into the public domain and that has been part of the process. In terms of maladministration, in discussing this with the Police Federation and the Police Superintendents' Association and others I have been encouraged by their representations that whilst they remain concerned that there ought to be a form of redress, they are of the view that the relationship between officers being investigated and the investigators of the Ombudsman's office has very much improved, that the procedures being followed appear to have been refined and improved so that police officers now have a much greater degree of confidence in the process itself and I think that is a recognition that in the early days there may well have been circumstances in which perhaps individuals could have been handled differently and perhaps more appropriately. So their sense is that things are improving. In the case of day-to-day investigations, I believe we probably will need to return to this and probably in the light of the court case.

Chairman

99. When the Ombudsman's system was set up in this country indeed the principle was that the Ombudsman concerned would be accountable to Parliament. Is there not a way in which this Ombudsman could be accountable? There is a Select Committee on the Ombudsman here. There are all sorts of ways in which, if you wanted to, you could make the Police Ombudsman accountable to Parliament. Is that one of the considerations you have had?

(*Jane Kennedy*) It is one of the considerations. We were not sure that that would actually deal with the need for an individual to receive redress where an individual had a complaint, which I think is broadly the concern that the Police Association have. We were not sure that any of the current parliamentary structures would offer that redress.

100. Redress for the individual?

(*Jane Kennedy*) Yes.

The Reverend Martin Smyth

101. We have been discussing points of contention and in your letter to the Chairman dealing with clause 17 and the concept of reasonableness you suggested that whether a request for information by the Police Board is reasonable would be “how a reasonable Board would act”. Would this be a test to be applied by the Secretary of State or by some other authority, bearing in mind that all of those things are reasonable? From time to time we accuse each other of not being reasonable. I wonder how subjective this test for reasonableness is?

(*Jane Kennedy*) Bearing in mind that the purpose of the Board is to secure the most effective and efficient police service, that would form the backdrop to any consideration of whether the request was reasonable. The Chief Constable would consider whether he felt that a particular request was unreasonable and may contest it. As I understand it he would contest that ultimately through a judicial review.

102. At times we discover sometimes that police officers think that things are not really relevant and in due course they discover that they are very relevant. What I am getting at is who sets the standard and by what mechanism would a test of unreasonableness be brought? Would it be brought before the Secretary of State or some other authority?

(*Jane Kennedy*) We are going to be debating this in another place this afternoon. You may like to take note of what Lord Williams will say in response to these particular points. I am not sure that there is very much more I can say.

(*Mr Masefield*) The Minister will no doubt tell me if I am going further than I should. I think there is a relationship between this amendment and the existing section 59 of the 2000 Act. Patten specifically recommended that the Board should have a role in holding the Chief Constable to account and set out circumstances and criteria in which the Chief Constable might come to the Secretary of State and say I do not think those are appropriate, such as national security and this was one of the areas where the Board came to Ministers after a year or so of experience and said they would find it helpful to avoid having to go to the extreme power of invoking the section 59, with all the procedural arrangements with it, to have a rather less formal, more everyday use of power and I think perhaps it is helpful to bear in mind that if there were to be a test of this everyday power by the Chief Constable potentially there could be recourse to section 59 which has a rather more structured safeguard approach, that might be another means of resolving the issue rather than certainly having to go to the courts which one would naturally want to avoid.

(*Jane Kennedy*) If you look at the experience of the Policing Board in operation, I think you would be encouraged to conclude that they would take this extremely seriously indeed and any such conflict between them as the Board and a the Chief Constable would be a matter of very grave concern both to them and obviously to us. In dealing with some extremely

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difficult and sensitive issues, they have conducted the business of the Board without straying into these areas of enormous conflict, so it is basically encouraged by the way that the Board has been performing. I believe that the safeguard we have laid down, the test of reasonableness, is something that they understand and are applying.

Chairman

103. Can we turn now to the text for consideration. What is your current assessment of the potential for acts of completion which might be this text being introduced? Is it more likely or less likely when the Bill is published?

(Jane Kennedy) My opinion has not changed really. As I said in questions yesterday, we continue to judge that the IRA ceasefire is in tact, but there can be no doubt, none of us has any doubt, I am sure, around this table, that the Provisional IRA remain an active paramilitary organisation and it is precisely for that reason that we are in the current, and I hesitate to use the word "impasse", but the current difficulties in Northern Ireland, and notwithstanding any statement that the IRA may have made this morning or overnight—

104. They just say it is all your fault, but then everybody says that!

(Jane Kennedy) Well, as you know from bitter experience.

105. Yes.

(Jane Kennedy) I think we just have to wait and see. I have no reason yet to change my position on this.

106. You have had no indications which make you more optimistic or less optimistic?

(Jane Kennedy) Neither more nor less than I was.

Mr Beggs

107. Looking at the Belfast sub-groups and given the distinctive political persuasion of many local communities in Northern Ireland, has the Government considered the potential for a sub-group to be in conflict with its parent body and thereby achieve little for the community it represents?

(Jane Kennedy) Yes, that would obviously be an enormous disappointment not only for the communities who would not be getting the services they would expect, but to the Board and to the Government. The Belfast DPP remains the primary body with responsibility for carrying out the function of consultation within Belfast. It retains that responsibility and the sub-groups are accountable to that DPP and it, in turn, is accountable to the Belfast City Council and to the Police Board. The draft text for consideration does contain a number of checks and balances to ensure that the DPP does have a role in approving those procedures. If the Board too felt that there was a significant conflict between the district policing partnership in Belfast and one or more of the sub-groups, the Board also has the power to request an account from the DPP and then a determination would be made on how to deal with

that. If it was individual members of a particular sub-group or if it was the whole of a sub-group, then that would have to be dealt with again depending on the circumstances at the time.

108. So you are satisfied that there is provision there to enable any conflict which might arise to be resolved?

(Jane Kennedy) Yes. There is scope within these draft texts for the Board or Belfast City Council if they believe that members of either the DPP or a sub-group are not carrying out their role effectively, there is scope for them to be removed from membership from that sub-group.

109. On your last appearance before the Committee, you indicated that there would need to be representation on the sub-groups from at least the four main political parties. If it is necessary to make explicit in the law the requirement for appointments to be representative of the community, is it also necessary to make absolutely explicit the requirement for each of the political parties to be represented?

(Jane Kennedy) We believe so and we have achieved that by saying that for each sub-group the chairmanship of each sub-group should be held in turn between those four largest parties which would be on the council, so it would be the responsibility of the council to make sure that there were sufficient councillors to perform that role and function.

Chairman

110. Before we move on from that point, there is the potential for conflict here, is there not, because paragraph 3 provisions require "the balance of parties prevailing" to be represented, so what happens if you get an overwhelming vote in one area for one particular party? That would then conflict with the requirement, the specific requirement you are putting in that at least four parties must be represented. You could have a difficulty there, could you not?

(Jane Kennedy) The balance of parties prevailing applies right across the whole of all the sub-groups across Belfast, and taken together, as Clare reminds me, so that would be where the balance would be made, across all of the sub-groups. That does not remove the requirement to make sure that within each sub-group there is the capacity for the chairmanship of that sub-group to be held by one of the four main parties represented on the City Council. You are quite right that there is scope for conflict in all of this and it is one of the reasons why we understand the sensitivities of this and the reforms that we have proposed to these sub-groups that we have and made it explicit that we do not believe that now in the current circumstances it is the appropriate time to make precisely these changes, so these are not easy changes that we are proposing.

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[Continued

Mr Beggs

111. You have given the response that I was looking for. Finally, could I ask you, Minister, what would happen in situations where fewer than four political parties were represented on the council after a local general election?

(Jane Kennedy) Is it explicit that it has to be four? So far as practicable. I knew that there was a caveat. Having re-read it in the early hours of this morning, I saw the caveat and then I had forgotten it. So far as is reasonably practicable, that would be the objective, but if the electorate changed that, then they would not be held to finding four if four did not exist.

(Ms Salters) And the same is true for DPPs at the moment, under the terms of Schedule 3 of the Act. If there were only three political parties on a council, they would have to find a way around it.

Mr McCabe

112. I wonder if you could tell us what would be the thinking that led to the Belfast sub-groups in the first place? Why are they not DPPs in their own right given that they report essentially to a district police command structure?

(Jane Kennedy) Because the DPPs are responsible to the local authority. That is the principle, I think, and Belfast City Council clearly cannot be easily

broken down into four areas, but because there are four command structures within Belfast and because the area is so large and so diverse and has so many issues, it was felt that four sub-groups were, therefore, not inappropriate in the circumstances.

113. But it was essentially about tying it to the district council structure that made you go down that route?

(Jane Kennedy) We felt that it was an important principle and that the DPP should be accountable to both Belfast City Council and the Board, but that it was possible to arrange a structure which allowed for carrying the accountability of policing down into the districts whilst maintaining that important principle and that connection to Belfast City Council.

(Mr Masefield) And that is very consistent with the pattern, paragraph 626 which says that each district council should establish a DPP and then the next paragraph says that because of the size of Belfast, we recommend that there should be four sub-groups.

(Jane Kennedy) Whether there should be as many district councils as there are is not a matter for me.

Chairman: Minister, thank you very much. As always, you have been helpful and frank with us and we are very grateful to you for coming.

APPENDICES TO THE MINUTES OF EVIDENCE

APPENDIX 1

Memorandum submitted by the Committee on the Administration of Justice (CAJ)

PRELIMINARY COMMENTS ON THE NEW POLICIES CLAUSES AND TEXT FOR CONSIDERATION

The NIO recently published draft clauses and separate text relating to outstanding policing issues. These are designed to implement what was agreed at Weston Park and what was contained in the revised Patten Implementation Plan. The UK government intends to introduce legislation to Parliament before Christmas.

This paper analyses the draft clauses and the separate text and highlights CAJ's preliminary views about the proposed changes. We have examined the proposals in light of Patten, the revised Implementation Plan and the public statement following Weston Park.

In this preliminary response we have focused entirely on the specific proposals contained in the NIO document. There may well be other issues that should be revisited in any new policing legislation, with a view to fully implementing Patten, and we will consider these in preparing our formal response.

1. *Consultation with Board*

Under section 24 of the Police (Northern Ireland) Act 2000 (the 2000 Act) the Secretary of State (SoS) had the power to determine and revise long term objectives for the policing of Northern Ireland. If he did that he had to consult with the Board. This draft clause obliges the Secretary of State to consult the Board "with a view to obtaining its agreement to the proposed objectives or revision".

The second part of this clause imposes a similar obligation on the SoS when issuing codes of practice on the exercise of the functions of the Board or the Chief Constable.

Preliminary CAJ view: This appears to be designed to increase the power of the Board. It is difficult to decide if it will make a difference in practice. This may need litigation to tease out the difference between consultation and consultation with a view to obtaining agreement. An alternative formulation would be for the SoS to be obliged to get the agreement of the Board before he sets or changes long term objectives/codes of practice.

2. *Board's policing objectives*

Under section 25 of the 2000 Act the Board's policing objectives had to be framed in such a way as to be consistent with the objectives set by the SoS. This section has now been amended to oblige the Board to take account of the long term objectives set by the SoS.

Preliminary CAJ view: This clause represents a strengthening of the Board's role. The new wording is in line with Patten which specifically recommended that the Board should "take account of" longer term objectives set by the SoS.

3. *Performance summaries*

Under the 2000 Act the Board had to publish a performance plan for the forthcoming year in which it would include a summary of the Board's assessment of its and the Chief Constable's performance in the past year. The effect of these amendments seems to be that the Board has the option of how to publish this plan either as part of a performance plan for the forthcoming year or its annual report.

Preliminary CAJ view: We are unclear as to the intent and effect of this amendment but on the face of it, it appears to allow the Board more flexibility in the matter of how it publishes these summaries.

4. *Public Meetings of the Board*

The amendments mean that in future the Board only has to hold eight public meetings a year as opposed to 10.

Also, the Board does not have to wait 28 days between meetings.

Preliminary CAJ view: this tends to reduce transparency for no obvious reason. It is also a clear departure from Patten who recommended that the Board should "meet in public once a month" (para 6.36). Nothing in the revised Implementation Plan nor the public part of the Weston Park agreement indicated that this departure was envisaged.

5 and 6. *Reports of Chief Constable and Inquiries by the Board*

This deals with reports requested from the Chief Constable by the Board and the holding of Inquiries by the Board. The 2000 Act allowed the Board to request reports from the Chief Constable and to hold inquiries but both powers were subject to appeal by the Chief Constable to the SoS on four grounds:

- national security;
- relates to information regarding an individual and is of a sensitive personal nature;
- would prejudice proceedings which have commenced in a court;
- or would prejudice the prevention or detection of crime or the apprehension of offenders.

Now the grounds are three fold:

- national security;
- information is sensitive personal information or would be likely to put an individual in danger;
- the information would prejudice proceedings which have commenced in a court of law.

Preliminary CAJ view: the removal of the fourth criterion is welcome but the three remaining criteria are sufficiently broad to cause potentially grave problems. Patten recognised that this was an important power to grant the Board and that it represented a significant element in holding the police to account. While Patten recommended three grounds that might limit the granting of reports to the Board or the holding of inquiries—national security, sensitive personnel matters and cases before the courts, he did not specifically recommend the mechanism contained in this draft clause to subject decisions of the Board to appeal. We believe there should be some independent element to decisions as to whether requests/decisions by the Board genuinely fail within the three criteria listed by Patten.

In addition, the phrase relating “to information that might put an individual in danger” has no basis in Patten and was not included in the 2000 Act yet it has been added to this draft clause. In the revised Implementation Plan the NIO did not mention this additional ground.

The NIO indicated in the revised Implementation Plan that they would substitute “sensitive personnel” for “sensitive personal” and define it. They have not done this. The definition included in the draft clause relates to “personnel information”. There is no definition of “sensitive”. We would have concerns that all of these grounds are open to potential abuse. We believe they should be narrowly drawn to limit that potential. We see no reason for the inclusion of grounds not mentioned in Patten. We also believe that information which would put someone’s life in danger will already be covered by the existing qualifications, by the application of Public Interest Immunity during the inquiry, or by the state’s obligations under article 2 of the European Convention on Human Rights. We would therefore recommend that the second limb of the second qualification be withdrawn.

7. Approval of proposals relating to inquiries by Board

The 2000 Act stated that a decision to hold an inquiry could not be taken unless a proposal to that effect had been approved by the required number of members of the Board present and voting. The required numbers were 10 if the Board had 18 or 19 members; nine if it had 16 or 17 members; and eight if it had less than 16.

This part states that in future the decision must be taken by a majority of those present and voting and by the required number of members. The required numbers are reduced from 10 to eight; nine to seven; and eight to six.

Preliminary view: the decision as to weighted voting on inquiries was never sufficiently explained before the passage of the 2000 Act. We believe that while the holding of inquiries is an important power, there is no reason to lay down such weighted voting procedures in legislation and we would recommend that decisions to hold inquiries should be taken by a simply majority.

8. Independent members

This relates to District Policing Partnerships and imposes an obligation which hitherto did not exist on the Board, to ensure that in appointing independent members of the DPP the Board has to ensure that members of the DPP taken together (ie independents and politicals) are representative of the community in the district.

Preliminary CAJ view: as an effort to increase representativeness we welcome this proposal.

9. Core policing principles

The 2000 Act obliged officers to be guided by the code of ethics and to carry out their functions in co-operation with and with the aim of securing the support of the local community have been replaced by the insertion of new core principles of policing. These state that police officers shall carry out their functions with the aim of securing the support of the local community and of acting in co-operation with the local community.

The new section also obliges the police to carry out their functions guided by the code of ethics.

There are also amendments obliging the Board to monitor the performance of the police in complying with the new core principles, and to include an assessment of this performance in the Board’s annual report.

Preliminary CAJ view: This clearly enhances the importance of community policing which is welcome and in line with Patten and the revised Implementation Plan. We remain of the view however that reference to human rights should also be made explicit in the core principles. Although not specifically recommended by Patten, nevertheless it is clear that he regarded human rights as central to his report and the future of policing in Northern Ireland.

10. *Chief Constable's functions*

This rearranges section 33 of the 2000 Act so that while the Chief Constable still has to have regard to the policing plan issued by the Board and any code of practice issued by the SoS his/her duty in relation to the code of practice only applies in so far as it is consistent with his/her duty to the plan.

Preliminary CAJ view: This seems to enhance the standing of the Board vis a vis the SoS and the Chief Constable and would be entirely consistent with Patten so again is something we would welcome.

11. *Provision of information to Board*

A new obligation is imposed on the Chief Constable to supply the Board with such information as it reasonably requires for the purposes of its functions. This obligation is further circumscribed by the same qualifications as those which apply to Board inquiries.

Preliminary CAJ view: The insertion of the word "reasonably" is a further restriction on this power and is not included in the sections which detail the Board's powers to obtain reports from the Chief Constable. There is no explanation for its addition here. This word should be deleted and the concerns we articulated at 5 and 6 should be addressed.

12. *Fixed term appointments*

This allows the CC to appoint someone to the PSNI for fixed terms not exceeding three years. The appointments cannot be to the rank of constable or to the rank of a senior officer ie above the rank of superintendent.

Preliminary CAJ view: this relates to recommendations 127 and 128 of Patten which deal with lateral entry. It is limited to the middle ranks because the Board would have to appoint more senior officers. However, we presume the Board should have the power to second someone at this level if they wished. It is unclear to us if they have the power. Clarification is needed on this point because surely a key point about lateral entry is that it can have an impact at senior levels.

13. *Investigation by the Ombudsman*

This section allows the Ombudsman to investigate a practice or policy if it came to her attention under the Part of the Act relating to individual complaints and she has reason to believe it is giving rise to significant public concern.

If she decides to conduct such an investigation, she must inform the Chief Constable, the Board and the SoS and at the end must report to the CC and the Board and also to the SoS where it relates to an excepted matter.

The new section then allows the Board or the Chief Constable to essentially appeal to the SoS in much the same way as in relation to inquiries and on the same grounds if the Ombudsman asks them for information/documents under this section. The SoS has the power to modify or set aside such requests.

Preliminary CAJ view: Patten recommended that the Ombudsman be given the power to investigate policies and practices but the attempt to subject it to the same limitations that apply to the obtaining of reports or the establishment of inquiries by the Board is unacceptable. It was not mentioned in Patten and is not mentioned in the revised implementation plan. Indeed it appears that the above formulation actually weakens the power of the Ombudsman. Under the 2000 Act the Ombudsman could report on any matters concerning the practices and policies of the police which should in her view be drawn to the attention of the Chief Constable and the Board. She could also carry out research into any matter which may have been the subject of a practice and policy report. These powers were not subject to the appeal process which appears in this current draft clause and neither were they subject to the qualification that the policy or practice is giving rise to significant public concern. CAJ has long been of the view that the Ombudsman should have the power to investigate policies and practices. The introduction of this power should not however be used as cover to actually dilute powers which she already enjoys.

TEXT FOR CONSIDERATION

The NIO also published text for consideration dealing with two other issues which they had undertaken to reconsider.

Independent members of DPPs: disqualification

Basically this allows people who have had convictions and have been out of prison for five years to be members of the DPPs.

They also have to make a declaration against terrorism in the terms of the one which has to be taken by those standing for election.

Preliminary CAJ view: This should increase representativeness in certain areas. It also appears to end the anomalous situation where a convicted person could be a political member of a DPP but not an independent member.

Belfast

While the old Act did make provision for local policing sub groups in Belfast these are strengthened by the new changes so that they will essentially be DPPs for these areas. Also under the 2000 Act the sub groups were to consist of six members of the Belfast partnership and be appointed by the partnership. However, under the new changes the sub group shall consist of 11 members and they need not be members of the partnership. Six shall be council members and five shall be independents. The Chair and vice chair will be still be appointed by the Council and shall be political members.

Preliminary CAJ view: these changes seem to be more in line with Patten.

December 2002

APPENDIX 2**Memorandum submitted by the Northern Ireland Association for the Care and Rehabilitation of Offenders (NIACRO)**

Because of time and resource constraints this response is quite succinct and is not as full in terms of its breadth and depth as NIACRO would have liked. Immediate responses to some of the proposals are as follows:

4. Public Meetings of the Board (j019)

NIACRO would suggest that the Board should meet in public once a month as suggested in Patten. The draft legislation proposes eight public meetings instead of 10. It is NIACRO's view that this is a diminution of accountability.

6. Enquiries by Board (j010)

NIACRO takes the view that some type of independent arbitration is required in respect of determining grounds for appeal in respect of the three grounds identified.

7. Approval of Proposals to inquiries by the Board (j011)

NIACRO would recommend that the decision to hold an inquiry should be taken by simple majority.

8. Independent Members (j025)

NIACRO welcomes this proposal.

13. Provision of Information to Board (j022)

"Reasonably" requires definition or removal.

15. Investigations by the Ombudsman (j016)

NIACRO is aware that there is intense debate particularly in the media about the potential for reduction in powers of the Ombudsman. NIACRO would be very concerned if this were to be the case and would be very opposed to such.

On a general point but in relation to Independent Members: disqualification (j026)

NIACRO recognises that we are in a period of transition and as an Organisation would advocate the removal of barriers to inclusion. It is NIACRO's view that the proposals as set out in this section reinforce exclusion and should be reduced and/or introduce a process that deals with the issues of "ordinary" crime and those experienced by politically motivated ex-prisoners in a more specific manner that simultaneously address barriers to inclusion.

6 December 2002

APPENDIX 3**Memorandum submitted by Mr Ian Paisley Jnr****Member of the Northern Ireland Assembly for the North Antrim constituency**

Thank you for your press notice of 28 November regarding the Policing Review Draft Clauses.

As a member of the Northern Ireland Police Board I am utterly disgusted at the Government's attempt to completely change the establishment of the District Policing Partnerships by way of their proposals, in what I can only regard, as the Sinn Fein sponsored clauses that the Government is now considering.

Number 7. Approval of Proposals relating to inquiries by Board.

Reduces the number of Police Board members required to initiate investigations and reports. Given that such investigations will be of a controversial nature it is not accepted that a reduction in this number would serve any useful public purpose. Members of the Board who want public money spent on such inquiries ought to be able to convince a majority of the Police Board of the merits of such an inquiry before tying the Police Board into it. It is the DUP view that a majority of the Board should be a significant majority and certainly not as few as "six" members as proposed by the Bill.

Number 8. Independent Members.

We wish to express a concern that the appointment of independent members that are "representative of the community in the district" could result in several DPP panels being single identity panels because they reflect a districts political make up.

Number 9. Disqualification.

A member disqualified from office is only disqualified for the life of the elected period. A disqualification ban ought to be longer ie not less than 10 years.

Number 11. Core Policing Principles (1)

Asking police officers to carry out functions aimed at "securing support of the local community and acting in co-operating with the local community" will pose difficulties in areas where non-law abiding members of the district have sway on the DPP? It would force the police chief to alter his policing tactics to suit those aims that could be counter to good law and order practice elsewhere. The clause should be amended to use the word co-operate with the local community where it is appropriate to do so or words to that effect.

Number 14-(1) (4)

We would like clarification on this point. Does the government intend to take on a role of appointing constables for lateral entry? Such a power would be available to the Secretary of State using this clause. Can he confirm if he intends to do this? The Chief Constable has already requested that such a step be taken to assist him to recruit Det. Con.

Number 15.

We reject the detail of this section. We would point out that:

1. The Police Ombudsman ought to be an independent person of judicial standing. Nuala Oloan is neither. She is married to an SDLP public representative and has a very limited legal background. Her independence has already been undermined and she ought to be replaced.

2. The Ombudsman must be held to account by another body. This is absent from the current regulations. We have sought it on three separate occasions and to date the MO has ignored this request.

3. The Police Ombudsman ought to be prevented from investigating historic cases. The police Ombudsman are supposedly about drawing a line in the sand. The current operating is more like a witch-hunt of police officers.

4. The Ombudsman does not consult with the Police Board or the Chief Constable before publishing her reports. This ought to be a requirement under law to prevent the politicisation of the publication of such reports. Any police officer referred to by the Ombudsman in a report ought to be given the right to consultation and reply before publication of a report.

5. A review of the office of Police Ombudsman ought to commence.

The Bill falls well short of recognising any one of these matters that we have consulted with the previous Secretary of State and Minister of Security.

The clauses as drafted under number 15 extend the powers of the Police Ombudsman giving her power to investigate any practice and policy of the police. There is no limitation on this matter. Your advisors stated at our meeting on 26 November that "in principle" historic cases could not be investigated. However since her appointed many of the Ombudsman's reports have been into matters of history. We have no confidence that this principle will be honoured.

The "Sinn Fein" text as was described by Jane Kennedy is without exception rejected. It is a terrorists charter. If implemented under any circumstances it would undermine Protestant support for the police. Criminals would be placed in charge of crime prevention policies and Paedophiles placed in charge of policing

practices. There is no safeguard whatsoever to the victims or the silent majority of people who do not want any more concessions made to those who have criminalised this society.

The removal of the ban on those independent members of the DPP's would undermine the credibility of the DPP's and the current round of applicants who applied to join DPP's that did not have criminals on them.

No thought has been given to how such a recruitment process would operate along side what has already occurred.

Increasing the powers of the Belfast sub groups removes any possibility of political balance being achieved in the formation of the Boards. Essentially West and North Belfast Boards will be dominated by criminal elements.

Such concessions will only provoke increased anger amongst the Unionist community at a time when they already know the police is losing a grip on its ability to combat crime and disorder.

3 December 2002

APPENDIX 4

Memorandum submitted by the Human Rights Commission

POLICE (NORTHERN IRELAND) BILL AND TEXTS FOR CONSIDERATION

The Northern Ireland Human Rights Commission did not offer comments on the Police (NI) Bill during its impressively swift progress through the Committee stage. In general terms we are content with the Bill, following certain amendments and assurances that allayed earlier concerns about (in particular) its impact on the office of Police Ombudsman. We would have preferred that, in setting aims for policing, the Bill should have identified the protection of human rights as the primary aim, but there will be other opportunities for us to raise that. However, we would like to advise the Committee of our concerns in relation to one of the matters covered in the "texts for consideration" arising from the Weston Park talks, but omitted from the present Bill.

This is the question of whether ex-prisoners should be disqualified for five years from appointment to the District Policing Partnerships (DPPs). Given that such people are already eligible to serve as *elected* members of the DPPs, it is difficult to see what would be achieved by barring applicants for appointment as *independent* members. The Human Rights Commission believes that there should be no blanket ban on such people, but their applications should obviously have to be considered on merit. The human rights basis for this is the principle that people who have served their time in prison should not thereafter be discriminated against unless there is an objectively good reason for so doing. Having regard to the desirability of the membership of DPPs reflecting the composition of the communities they serve, and securing the broadest possible base of support, we see no objective need to introduce an automatic and absolute disqualification on former prisoners. Indeed, we would say that this should extend to membership of the Police Service itself.

I hope that you will draw these comments to the attention of members when the Committee next discusses the outstanding Weston Park proposals.

13 January 2003

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