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# Police And Justice Bill

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*These notes refer to the Police and Justice Bill as introduced in the House of Commons on 25 January 2006 [Bill 119]*

## POLICE AND JUSTICE BILL

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### EXPLANATORY NOTES

#### INTRODUCTION

1. These explanatory notes relate to the Police and Justice Bill as introduced in the House of Commons on 25 January 2006. They have been prepared by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.
3. A glossary of abbreviations and terms used in these explanatory notes is contained in Annex B to the notes.

#### SUMMARY

##### Part 1 - Police Reform

4. Clause 1 and Schedule 1 establish the National Policing Improvement Agency, a new body that will be formed to replace Centrex (the Central Police Training and Development Authority) and PITO (the Police Information Technology Organisation). Clause 2 and Schedule 2 detail amendments to the Police Act 1996 regarding Basic Command Units, the composition and function of police authorities and other matters. Clause 3 makes provision regarding police authorities as best value authorities. Clauses 4 to 6 standardise the powers of Community Support Officers (CSOs) and provide a new power in relation to dealing with truancy. Schedule 3 makes amendments consequential on the new standard powers of CSOs and other minor amendments in connection with the exercise of police powers by civilians.

## **Part 2 - Powers of Police etc.**

5. Clauses 7 and 8 and Schedule 4 amend the provisions in the Police and Criminal Evidence Act 1984 on police bail and confer greater powers on police officers to stop and search at aerodromes. Clause 9 extends provisions in the Immigration, Asylum and Nationality Bill to collect travel information on domestic

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flights and voyages. Clauses 10 and 11 and Schedule 5 amend Chapter 1 of Part 4 of the Police Reform Act 2002 (exercise of police powers by civilians) so as to provide for the issuing of fixed penalty notices for disorder by accredited weights and measures inspectors (commonly known as Trading Standards Officers) and other specified persons. Clauses 12 and 13 relate to conditional cautions. Clause 12 amends the Criminal Justice Act 2003 to provide that the conditions attached to a conditional caution may be punitive and makes provision in respect of conditions in the form of financial penalties and requirements to attend at a particular time or place. Clause 13 gives the police a power of arrest for breach of a conditional caution.

## **Part 3 - Crime and Anti-social Behaviour**

6. Clauses 14 and 15 and Schedule 6 amend the Crime and Disorder Act 1998 and gives local authority scrutiny committees a role in scrutinising the way in which persons and bodies responsible for tackling crime and disorder discharge their functions. Clauses 16 to 18 amend the provisions on parenting contracts and parenting orders in the Anti-social Behaviour Act 2003 to provide that local authorities and registered social landlords can enter into parenting orders and apply for parenting contracts. Clauses 19 and 20 and Schedule 7 amend the Housing Act 1996 and the Local Government Act 1972 to alter the provisions relating to anti-social behaviour injunctions.

## **Part 4 - Her Majesty's Chief Inspector for Justice, Community Safety and Custody**

7. Part 4 establishes Her Majesty's Chief Inspector for Justice, Community Safety and Custody. It replaces Her Majesty's Chief Inspector of Prisons, Her Majesty's Inspectors of Constabulary, Her Majesty's Chief Inspector of the Crown Prosecution Service, Her Majesty's Inspectorate of the National Probation Service for England and Wales, and Her Majesty's Inspectorate of Court Administration. Part 4 gives the new Chief Inspector a general duty to inspect the courts system, the criminal justice system and the immigration enforcement system as well as a specific duty to inspect prisons including the treatment and conditions of prisoners. This part of the Bill also contains powers to confer additional functions on the Chief Inspector, as well as making provisions for inspection powers and reports by the Chief Inspector.

## **Part 5 - Miscellaneous**

8. Clauses 33 to 36 introduce increased penalties and new offences regarding computer misuse in relation to cybercrime. Clause 37 and Schedule 11 amend the Protection of Children Act 1978 to enable the forfeiture of indecent photographs of children irrespective of the power they have been seized under. Clause 38 gives a new power to the Secretary of State to confer functions on the Independent Police Complaints Commission which would enable the Commission to investigate complaints and misconduct regarding the exercise of immigration and asylum enforcement functions, in the same way as it currently investigates the police. Clause 39 and Schedule 12 make a number of amendments to the Extradition Act 2003 regarding persons unlawfully at large, transfer from International Criminal Court,

remand and extradition of persons serving sentence in the United Kingdom, remands in connection with appeal proceedings, time limits and warrants, etc.

## **Part 6 - Supplemental**

9. Part 6 deals with the making of orders and regulations under the Bill, contains consequential amendments and

repeals of existing legislation, and provides for the commencement of the Bill. Schedules 13 and 14 make amendments and repeals consequential to this Bill.

## BACKGROUND

10. The Government published the White Paper *'Building Communities, Beating Crime: a better police service for the 21<sup>st</sup> century'* (CM 6360) in November 2004. The White Paper set out the Government's strategy for strengthening the ability of the police and their partners to prevent, deter, detect and reduce crime. The paper set out three broad objectives to achieve this, namely: to spread neighbourhood policing to every community with improved police responsiveness and customer service; further modernisation of the police workforce to ensure that the service is fully equipped and able to deliver these changes; and greater involvement of communities and citizens in determining how their communities are policed. Part 1 of the Bill gives effect to those provisions in the White Paper that require primary legislation.

11. Chapter 4 of the White Paper set out the Government's proposals for strengthening the effectiveness of Community Support Officers (CSOs), including by developing a minimum set of powers for all CSOs irrespective of which force employs them. In August 2005 the Home Office published its consultation paper *'Standard Powers for Community Support Officers and a Framework for the Future Development of Powers'*. A summary of the responses to this consultation together with the Government's response was published in January 2006 (available at <http://www.homeoffice.gov.uk/documents/cons-cso-powers-310805/>). Clause 4 makes provision for standard powers for CSOs.

12. The Government launched its anti-social behaviour strategy - the TOGETHER campaign - in 2003. Following the establishment of the Respect Task Force in September 2005, the Prime Minister published the Respect Action Plan (available at <http://www.homeoffice.gov.uk/documents/respect-action-plan>) in January 2006. The Respect Action Plan set out the key elements of the Government strategy. Clauses 14 to 22 gives effect to a number of proposals in support of two limbs of the Action Plan, namely:

- strengthening communities; and
- ensuring effective enforcement and community justice.

13. In March 2005 the Chancellor of the Exchequer announced the Government's intention to reduce the number of public sector inspectorates from 11 to four. The Home Office, the Attorney General's Office and the Department for Constitutional Affairs consulted on proposals to bring together and refocus the work of the five inspectorates for the police, the Crown Prosecution Service, court administration, prisons and the National Probation Service (*'Inspection Reform: Establishing an Inspectorate for Justice and Community Safety'* published March 2005). A synopsis of the responses to the consultation and the Government's proposals for establishing a single inspectorate for justice, community safety and custody are contained in the policy statement *'Inspection Reform: Establishing An Inspectorate For Justice, Community Safety And Custody'* published in November 2005. Part 4 of the Bill contains provisions in respect of the appointment, functions and powers of the Chief Inspector for Justice, Community Safety and Custody.

## TERRITORIAL EXTENT

14. The Police and Justice Bill's provisions extend to England and Wales, while certain provisions also extend to Scotland and Northern Ireland. The Bill addresses both reserved and devolved matters.

15. The legislation extends to Scotland for the following:

- National Policing Improvement Agency provisions;

- Her Majesty's Chief Inspector for Justice, Community Safety and Custody provisions;
- new police powers to collect data for domestic air and sea travel, insofar as it relates to reserved matters;
- the extension of stop and search powers at aerodromes;
- amendments to the Computer Misuse Act 1990;
- the extension of the IPCC's remit to immigration and asylum enforcement functions; and
- amendments to the Extradition Act 2003.

16. The legislation extends to Northern Ireland for the following:

- National Policing Improvement Agency provisions;
- Her Majesty's Chief Inspector for Justice, Community Safety and Custody provisions;
- new police powers to collect data for domestic air and sea travel;
- the extension of stop and search powers at aerodromes;
- amendments to the Computer Misuse Act 1990;
- the extension of the IPCC's remit to immigration and asylum enforcement functions; and
- amendments to the Extradition Act 2003.

17. In relation to Wales, the subject-matter of the Bill has not been transferred except for:

- Her Majesty's Chief Inspector for Justice, Community Safety and Custody - insofar as some of the functions that will be inspected are in part transferred. For example, a prisons inspection may look at healthcare in prisons that may be provided by a Welsh health authority;
- the Community Call for Action provided for by clause 15 - local government is a transferred matter in Wales and the new process will be largely in the hands of ward councillors and scrutiny committees at a district council level;
- changes to the functions of Crime and Disorder Reduction Partnerships - CDRPs are called Community Safety Partnerships in Wales and, due to local authorities being key partners, are partly transferred;
- the expansion of parenting orders and parenting contracts - as the new powers to apply for parenting orders and enter into parenting contracts will be provided to local authorities, this is a transferred matter in Wales; and
- the improvements to injunctive powers to tackle Anti-Social Behaviour - as these powers will be available to social landlords and local authorities, this is also transferred.

## **THE BILL**

### **COMMENTARY ON CLAUSES**

## **Part 1: Police Reform**

### **Clause 1 and Schedule 1: the National Policing Improvement Agency**

18. *Subsection (1)* establishes the National Policing Improvement Agency (the Agency) as a body corporate. The Agency will be an executive Non-Departmental Public Body (NDPB).

19. *Subsection (2)* abolishes the Central Police Training and Development Authority (Centrex) and the Police Information Technology Organisation (PITO).

20. *Subsection (3)* introduces Schedule 1, which makes further provision about the Agency and sets out details of its constitution, objects and powers.

#### **Paragraph 1: The Agency's Objects**

21. This paragraph describes the Agency's objects. The Agency will also provide expert consultancy and support to policing operations. The Agency will forecast future implications for policing including both advantages for and potential harm to the service, to facilitate progress and minimise risk. A key output of this work will be the identification of mission critical issues for the police service in England and Wales. The Agency will exchange information and evidence-based good practice with international policing partners on a reciprocal arrangement. Support will also be provided to forces in the form of facilitation and definition of good practice in procurement and personnel matters. The Agency will consult on and define the Information Technology needs of the police service, and will be responsible for overseeing and contracting out the design and delivery of these requirements.

#### **Paragraph 2: The Agency's principal power**

22. This paragraph enables the Agency to achieve the objects set out in paragraph 1 by giving it the power to do anything it considers appropriate to attain those objects. *Sub-paragraph (2)(a)* makes it clear that the Agency may support police forces by itself carrying on activities (e.g. operating the Police National Computer (PNC) following the abolition of PITO, providing training or undertaking procurement work) as well as by assisting police forces in their carrying-on of activities. *Sub-paragraphs (2)(b) and (3)* enable the Agency to accept gifts or loans, where it decides to do so in connection with the discharge of its objects. *Sub-paragraph (4)* precludes the Agency from borrowing money or other property without the consent of the Secretary of State.

23. *Sub-paragraph (5)* expressly requires the Agency to obtain agreement from a Scottish, Northern Ireland or off-shore policing body, or the body's chief officer or

the authority that maintains the body, before providing advice, assistance or support to or for the body.

#### **Paragraph 3: Meaning of "listed police force" and "restrictedly listed police force" in paragraphs 1 and 2**

24. The definitions ensure that references to a listed, or restrictedly listed, police force include, in the case of the main police forces in Great Britain, not only the constables that make up the force, but also any special constables and cadets under the control of the chief constable (or Commissioner, in London) and any civilians employed for the purposes of the force.

#### **Paragraph 4: Consultation - exercise of the powers in relation to Scotland and Northern Ireland**

25. This paragraph provides for the Agency to consult the Scottish Police Services Authority and persons representing the interests of chief constable in Scotland in so far as the Agency's activities might or would, relate to Scottish police forces. The Agency must also consult the Secretary of State for Northern Ireland so far as the Agency's activities might or would, relate to the Police Service of Northern Ireland or the Police Service of Northern

Ireland Reserve.

### **Paragraph 5: Annual Plans**

26. This paragraph requires the Agency to produce an "annual plan" before the beginning of each financial year published as the Agency sees fit. "The plan" must include:

- any priorities that the Agency has determined for the year
- any strategic priorities determined by the Secretary of State
- any performance targets established by the Agency
- a statement of financial resources that will be available to the Agency over the course of that year.

27. Any priorities set by the Agency must be consistent with the strategic priorities determined by the Secretary of State under paragraph 6.

28. *Sub paragraph (6)* places a duty on the Agency to send a copy of the plan to specified persons and to such other persons as it thinks fit.

29. Before issuing the plan the Agency must consult the Secretary of State, persons representing the interests of police authorities and chief officers of police in England and Wales and such other persons as it thinks fit.

### **Paragraph 6: Strategic Priorities**

30. This paragraph gives the Secretary of State a power to determine strategic priorities for the Agency. These strategic priorities are to be determined following consultation with the Agency, and persons in England and Wales representing the interests of chief police officers and police authorities. The Scottish Ministers are to be consulted where activities of the Agency would or might relate to policing in Scotland.

### **Paragraph 7: Chairman and other members**

31. This paragraph determines the membership of the Agency. It is to consist of a Chairman, Chief Executive, and ordinary members to be appointed by the Secretary of State. The Secretary of State may determine the number of ordinary members. Before appointing the Chairman, the Secretary of State must consult with representatives of police authorities and chief officers of police for England and Wales. A representative of each of these groups will also be appointed a member of the board, as well as one member of HM Home Civil Service. The maximum term of appointment for the Chairman and ordinary members is to be 5 years. A person may be reappointed to either position.

### **Paragraphs 8 to 10: Tenure**

32. A board member may resign at any time by giving written notice to the Secretary of State and will hold and vacate the office in accordance with the terms of their appointment. Paragraph 10 allows the Secretary of State to remove a Board member from office if they have been absent without the board's permission for a period in excess of 4 months, or if the board member fails to comply with the terms of their appointment, or is unable or unfit to carry out their duties. Conviction for any offence in England and Wales or elsewhere, or bankruptcy, may also lead to removal.

### **Paragraph 11: Re-appointment**

33. A person may be reappointed as a board member or chairman.

### **Paragraph 12: Remuneration, Pensions etc of appointed members**

34. The Secretary of State may determine the remuneration, allowances, pension and, where necessary, compensation payable by the Agency to the chairman and ordinary members.

### **Paragraphs 13 to 16: Staff**

35. The Home Secretary will appoint the Agency Chief Executive in consultation with the Chairman of the Agency. The consultation requirement does not apply to the appointment of the first Chief Executive.

36. *Paragraph 15* amends the Superannuation Act 1972 to allow staff of the Agency to be members of the Civil Service Pension scheme. The Agency must pay the Minister for the Civil Service such sums as the Minister determines in respect of such pensions.

37. *Paragraph 16* allows the Minister for the Civil Service to consent to an ex-employee's continuing to participate in the pension scheme if, on ceasing to be an employee, the person is a member of the Agency.

### **Paragraph 17: Status of staff member as constables**

38. *Sub-paragraphs (1) and (2)* of paragraph 17 together ensure that where an existing constable is appointed as a member of staff of the Agency they will retain the office of constable for the duration of their employment with the Agency. This applies whether the constable is seconded to the Agency or becomes an employee of the Agency. Section 97(8) of the Police Act 1996 also produces the same effect for seconded constables as a result of the amendments made by *paragraph 63*.

39. *Sub-paragraph (3)* of paragraph 17 means that where the post holder of Chief Executive is a constable immediately prior to holding the post of Chief Executive, they will hold the rank of Chief Constable.

### **Paragraph 18: Liability for acts of police members of staff**

40. This paragraph establishes the Agency's liability in respect of any unlawful conduct by constables seconded to the Agency.

41. *Sub-paragraph(2)* provides that the Agency will be a joint tortfeasor where such unlawful conduct by a seconded person is a tort (i.e. the Agency will be liable as if it had jointly with the seconded constable carried out the unlawful conduct).

42. *Sub-paragraph(3)* defines seconded constable for the purposes of paragraph 18.

### **Paragraph 19: Payment of amounts in connection with unlawful conduct of any staff**

43. This paragraph confers on the Agency a power to make discretionary payments in respect of damages and costs arising out of unlawful conduct by a member of the Agency's staff.

### **Paragraph 20: Committees and sub-committees**

44. This paragraph allows the Agency to delegate any of its functions to a committee or sub committee of the board. A committee or sub committee can include persons who are not members of the Agency; the Agency may determine and pay such remuneration and allowances as are appropriate to such persons in this category. The paragraph also makes it clear that functions may be delegated to members of staff.

### **Paragraphs 21 and 22: Procedure**

45. These paragraphs allow the Agency to determine its own procedures including numbers needed for a quorum and ensure that decisions taken by the Agency are valid, even when there are vacancies in the membership of the Agency or when members have been defectively appointed. Meetings of committees or sub committees must include at least one person who is a member of the Agency or its staff.

### **Paragraphs 23 and 24: Application of seal and proof of documents**

46. These paragraphs creates a presumption that any document signed on behalf of the Agency is valid and will be received in evidence.

### **Paragraph 25: Status**

47. This paragraph specifies that the Agency is not a Crown body.

### **Paragraph 26: Annual reports**

48. This paragraph requires the Agency to publish an annual report at the end of each financial year. The report must include an assessment of the extent to which the Agency has carried out the annual plan for that year.

49. *Sub-paragraph (4)* places a duty on the Agency to ensure that a copy of the report is sent to specified persons. It is open to the Agency also to send copies to such other persons as it thinks fit. The Secretary of State must lay a copy of the report before Parliament.

### **Paragraph 27: Reports to Secretary of State**

50. This paragraph allows the Secretary of State to require the Agency to submit to him a report on any of their activities. The Secretary of State may determine whether these reports are to be published (*sub-paragraph (3)*). Where a report is published, it may be published with any material excised (*sub-paragraph (4)*) where the material relates to national security interests or could prejudice the prevention or detection of crime or could jeopardise the safety of any person.

### **Paragraphs 28 to 30: Inspection and Direction**

51. These paragraphs allow the Secretary of State to ask for an inspection of the Agency by Her Majesty's Chief Inspector for Justice, Community Safety and Custody in regards to its efficiency and effectiveness if he sees fit. It also places a duty on the Secretary of State to make the report of an inspection public, subject to national security and other sensitivity considerations. *Sub-paragraph (5)* means that the Secretary of State must send a copy of the inspection report to the Agency and he can direct the Agency to take such measures as are necessary to remedy inefficiency or ineffectiveness.

### **Paragraph 31: Payments by Secretary of State to the Agency**

52. This paragraph makes provision for the Secretary of State to make grants to the Agency.

### **Paragraph 32: Charges by the Agency and other receipts**

53. The purpose of this paragraph is to authorise the Agency to charge for any goods or services that it provides. Save when the Secretary of State otherwise directs, any income received by the Agency (other than grant income) must be paid over to the Secretary of State. These funds in turn must be paid into the Consolidated Fund.



### **Paragraph 33: Payments by Agency to police authorities**

54. This paragraph allows the Agency to make payments to a police authority in England, Wales and to a police authority or joint police board in Scotland, and to the proposed Scottish Police Services Authority, for any purpose it considers related to the objects of the Agency.

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