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The Police and Justice Bill

Bill 119 of 2005-06

The *Police and Justice Bill* was published on 25 January 2006 and is due to have its second reading on 6 March.

The Bill contains police reform measures including: direction-making powers for the Home Secretary; powers to change the structure and functions of police authorities through regulations; a new National Policing Improvement Agency; and standard powers for Community Support Officers.

There are also new police powers, including: gathering bulk data on air and ship journeys within the UK; adding conditions to police "street bail"; attaching punishments to conditional cautions; and wider stop and search powers at airports.

There are also measures to tackle anti-social behaviour, including a new "community call for action", and new oversight provisions for Crime and Disorder Reduction Partnerships. The Bill would also merge five existing criminal justice inspectorates into one, and there are some changes to the law on computer misuse, child pornography and extradition.

There has been a certain amount of controversy over some of the police measures, and, during consultation, over the new Justice, Community Safety and Custody Inspectorate.

Pat Strickland

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Summary of main points

The *Police and Justice Bill* was published on 25 January 2006, and will receive its second reading on 6 March. It is a wide-ranging bill, which would introduce police reform measures and new police powers, implement some of the proposals from the Government's *Respect Action Plan* and merge criminal justice inspectorates. These changes are set against the backdrop of the Government's plans to restructure the police, creating larger "strategic" forces, and some debate over how best the police can serve communities responsively whilst effectively tackling the kind of serious crime which crosses force boundaries. However, the Bill does not provide for force amalgamations themselves.

Part 1 of the Bill would introduce in a number of police reforms, most of which were proposed in a White Paper in November 2004. These form the second stage of the Government's police reform programme.

The police reforms include:

- allowing the Home Secretary to give directions to police forces and authorities without the need for a negative inspection report. However, the Government states that these are to be used only as a "last resort".
- moving provisions governing the structure and functions of police authorities from primary to secondary legislation, partly in preparation for force restructuring
- the creation of a National Policing Improvement Agency to replace two existing agencies
- standardising powers of Community Support Officers (CSOs) and introducing a new power to deal with truants

Part 2 would introduce some new powers, mainly for the police, but also for weights and measures inspectors, who will be able to issue penalty notices. The police provisions include the powers to:

- gather bulk passenger, crew and flight/voyage information on air and ship voyages within the UK.
- add conditions to "street bail" granted by police to suspects
- attach punitive conditions to the conditional cautions introduced recently
- stop and search more widely at airports

Part 3 of the Bill contains provisions designed to deal with anti-social behaviour. Some of these have their origins in the 2004 White Paper. Other proposals have emerged since, for example from the Government's *Respect Action Plan*. They include:

- a new role for local authority oversight committees scrutinising Crime and Disorder Reduction Partnerships
- a new mechanism, called the "community call for action", to allow communities to request action on a community safety issue which they consider that the police or other crime and disorder reduction partners have failed to address adequately
- an extension in the range of agencies that can enter into parenting contracts and apply for parenting orders to include housing officers, Anti-social Behaviour co-ordinators and registered social landlords.

Part 4 of the Bill would merge the five criminal justice inspectorates (covering police, prisons, probation, court services and Crown Prosecution Services) into one new Justice, Community Safety and Custody Inspectorate. This is part of wider moves to rationalise the inspection of the both public and private sector bodies. The consultation on the changes provoked some concerns particularly in relation to prisons and the police.

Part 5 contains miscellaneous measures, including:

- new powers for the police to dispose of indecent images of children and the computers which hold them, irrespective of the powers under which they were seized.
- increased sentences for computer hacking, and some new offences connected with the acquisition of hacker tools
- extending of the remit of the Independent Police Complaints Commission to cover oversight of immigration and asylum enforcement
- changes to extradition law, to implement an agreement with the International Criminal court and give the Home Secretary some greater flexibility in granting extradition certificates to certain refugees

Few detailed analyses of the Bill have been produced at the time of writing. However, there has been some comment by interested organisations and by politicians in the press. The Association of Chief Police Officers has broadly welcomed the Bill, particularly the National Policing Improvement Agency and the measures to strengthen neighbourhood policing, although it expressed concerns about the Home Secretary's powers of intervention and the new Inspectorate. The Police Federation strongly supports the new stop and search powers, and calls for a new power for the police to check passports. It is concerned that the removal of the separate category of magistrates from police authorities will lead to more politicised oversight of policing, and is disappointed that the Bill does not standardise all CSOs powers. It welcomes the new truancy powers, however.

The Association of Police Authorities has also welcomed the National Policing Improvement Agency, together with the new "community call for action" and the proposals to improve Crime and Disorder Reduction Partnerships to make them more answerable to communities. However, it has concerns about the delegated powers to change the role and membership of police authorities and what it perceives as a shift of control to the Home Secretary. The Local Government Association has broadly welcomed the Bill.

Conservatives have opposed the widening of the Home Secretary's powers to direct forces and authorities, and have also criticised punitive conditional cautions for allowing criminals to escape custody. Liberal Democrats have criticised the delegated powers to change the composition and functions of police authorities, and are deeply worried about the new power to gather data on domestic flights and ship journeys.

The Bill extends to England and Wales, and certain provisions also extend to Scotland and Northern Ireland. There is to be a Sewel motion covering the extension of some devolved aspects of the Bill to Scotland.

A useful collection of Explanatory Notes, background papers, and a number of draft Regulatory Impact assessments on the Bill is available on the Home Office Website at <http://police.homeoffice.gov.uk/police-reform/PoliceandJusticeBill/>

Statistical information on police officers and staff is available in Library Standard Note SN/SG/634, *Police Service Strength*, 6 February 2006.

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I Police Reform

A. Background

1 Structure

There are currently 43 regional police forces in England and Wales, and a number of other non-geographical forces, for example the British Transport Police, the Ministry of Defence Police and Civil Nuclear Constabulary.¹

The regional police forces are divided into Basic Command Units (BCUs), which are the main operating units. Generally, there will be between three and ten BCUs covering areas such as a town or a district. In the Metropolitan Police, the BCUs are the 32 “Borough Operational Command Units”. BCUs are usually commanded by a superintendent or chief superintendent.

2 Control of policing - the “tripartite relationship”

Control of policing is shared between the Home Secretary, Chief Constables, and local Police Authorities in what is usually referred to as a tripartite relationship. Within this:

- The Home Secretary has responsibility for setting a national framework of priorities, though the National Policing Plan² and, together with the Deputy Prime Minister, pays the central police grant
- Chief Constables have operational responsibility for the effective and efficient policing in their forces
- Police authorities appoint chief constables, decide on the locally raised precept for policing via the council tax and oversee accountability

3 Other partners – Crime and Disorder Reduction Partnerships

In recent years there has been increasing emphasis on the police working with other agencies, most notably through Crime and Disorder Reduction Partnerships (CDRPs). The *Crime and Disorder Act 1998* as amended by the *Police Reform Act 2002* sets out statutory requirements for “responsible authorities” to work with other local agencies and organisations to review the levels and patterns of crime and disorder, and to develop and implement strategies to tackle these. The responsible authorities are:³

- the police
- local authorities
- fire authorities

¹ Further information on the current structure is on the UK Police Service website at <http://www.police.uk/default.asp>

² This is now included in a wider National Community Safety Plan – see section IE of this Research Paper below

³ Section 5(1)

- police authorities,
- local health boards in Wales, and
- primary care trusts in England

These statutory partnerships are known as Community Safety Partnerships (CSPs) in Wales. There are 354 CDRPs in England, and 22 CSPs in Wales.

B. The debate on the future of policing

The policing debate which has preoccupied Parliament in recent weeks, with a Westminster Hall debate, and two further debates in the Commons chamber, is on the restructuring of police forces in England and Wales. The Government has accepted the findings of Dennis O'Connor (one of Her Majesty's Inspectors of Constabulary), that larger "strategic" forces are necessary in order to deal with what is referred to as the "level 2 gap" in policing.⁴ Within this model:

- Level one covers locally-based crime and anti-social behaviour which can be dealt with by the BCU;
- Level two refers to cross border issues, such as organised crime and major incidents affecting more than one force, or more than one BCU within a force;
- Level three covers serious and organised crime, terrorism and other extremist activity operating on a national or international level.

The O'Connor report assessed the ability of the 43 force structure to provide "protective services" in a range of areas, and found that very few forces assessed fully met the required standard. The report considered that larger forces – those with over 4,000 officers – were likely to have much greater capability and resilience than smaller forces.

In response to the report, the Government has announced that it intends to reduce the number of forces, possibly to as few as 12.⁵ It is pressing ahead with amalgamations in four regions, and discussions are continuing about the remaining areas.⁶ Some commentators have criticised the report.⁷ Apart from concerns about the tight timetable and the financial effects, Members of Parliament have raised questions about whether neighbourhood policing would suffer in larger forces, and also how police accountability might be affected.⁸ Further information can be found in Library Standard Note SN/HA/3808.

The Bill does not contain provisions to amalgamate forces. However, much of the Government's police reform programme, which informs Parts 1-3 of the Bill, is attempting to address the same kind of concerns as have been raised in the debate over restructuring. A key question is how responsive neighbourhood policing and local

⁴ HMIC, *Closing the Gap A Review of the 'Fitness for Purpose' of the current structure of policing in England and Wales*, <http://inspectors.homeoffice.gov.uk/hmic/docs/docs/closinggap.pdf?view=Binary>

⁵ HC Deb 11 November 2005 c39-40WS

⁶ HC Deb 6 February 2006 cc39-42WS

⁷ See for example, "Merger report statistics 'questionable', *Police Review*, 13 January 2006

⁸ See for example HC Deb 6 February 2006, cc39-42

accountability can best be combined with the need for a coordinated response to serious crime and major incidents.

The Commissioner of the Metropolitan Police, Sir Ian Blair, raised similar questions in his Dimbleby lecture in November 2005, when he called for a national debate on the kind of police service the public wants.⁹ Sir Ian argued that lack of agreement in political and media debate about whether the police are doing well or badly resulted from “an extraordinarily wide divergence of view” as to what the police are for:

What we actually have is a number of different and partisan views of the police service, shouting at each other.

In 1993, the white paper on police reform, issued by the then Conservative government, stated, in entirely unequivocal terms, that “the main job of the police is to catch criminals”.

In contrast, the overarching purpose of the police service, issued by the incoming Labour government in 1997, was: “to build a safe, just and tolerant society, in which the rights and responsibilities of individuals, families and communities are properly balanced, and the protection and security of the public are maintained.”

Sir Ian identified a sixth “giant”; that of personal insecurity, which he said had now joined the five identified by Sir William Beveridge in his 1942 report on social insurance.¹⁰ He highlighted the choices over policing by contrasting 6 July 2005 – the day London won the Olympic bid, partly on the basis of an unarmed police force, good at handling crowds and understanding terrorism – with 7 July 2005 – the day suicide bombers killed 52 people. On the question of how best to combine neighbourhood policing with dealing with problems like terrorism, Sir Ian himself was clear that the answer did not lie in separating the two kinds of policing:

Every lesson of every police inquiry is that, not only the issues that give rise to anti-social behaviour, but also those that give rise to criminal activity and to terrorism begin at the most local level.

I will give you two direct examples.

The first is the dreadful death of the cockle pickers in Morecambe Bay. The inquiry into that stretched from overcrowded housing in Liverpool to the role of triad gangs in China: a single investigation.

The second follows the failed bombings of 21st July. A local authority worker identified the flat which three men shown on the CCTV images had frequented: this was the bomb factory. However, he also mentioned that he had found dozens of empty peroxide bottles in the waste bins. Had we had one of our neighbourhood policing teams in place then he probably would have told us about what he had found. Peroxide is the basis of the bombs.

⁹ Transcript available at <http://news.bbc.co.uk/1/hi/uk/4443386.stm>

¹⁰ Want, disease, ignorance, squalor and idleness – *Social Insurance and Allied Services*, Cmd 6404, 1942

Thus national security depends on neighbourhood security. It will not be a Special Branch officer at Scotland Yard who first confronts a terrorist but a local cop or a local community support officer. It is not the police and the intelligence agencies who will defeat crime and terror and anti-social behaviour; it is communities.

We do not want one kind of police force being nice to people and another one arriving in darkened vans wearing the balaclavas.

Whoever is responsible for the one has to be responsible for the other.

As the next section of this paper shows, the Government's police reform programme, which began mainly by strengthening central mechanisms for driving up standards, is now moving towards a greater emphasis on more responsive and "citizen-focused" neighbourhood policing. The mechanisms for achieving local accountability will arguably acquire even more importance within the new landscape of larger, strategic forces.

Another key question, which is ever-present in debates about policing, is what the appropriate balance of power might be between the tripartite partners - central government, local police authorities and independent police chiefs - in achieving the kind of police service the country needs. This Bill, like others which have preceded it, is already provoking debate about whether it strikes the right balance in strengthening local scrutiny mechanisms but also enabling further direction by central government.

C. The police reform programme

The Bill forms part of the Government's programme of police reform, which was launched in December 2001 with the White Paper, *Policing a New Century*.¹¹ The changes from the first stage which needed legislation were enacted in the *Police Reform Act 2002*. This first phase included

- new powers and duties for the Home Secretary, for example a requirement to issue an annual National Policing Plan, and increased powers to give directions to police authorities and to intervene to suspend a chief officer or require an improvement in performance
- the establishment of new central institutions designed to drive up standards of policing, including the establishment of a Police Standards Unit at the Home Office to identify and spread good practice, and the National Centre for Policing Excellence, to promote more effective police training
- extending the police "family" particularly through the introduction of Community Support Officers
- a new more independent complaints system through the Independent Police Complaints Commission

¹¹ Home Office, *Policing a New Century: A Blueprint for Reform*, Cm 5326, November 2001, <http://www.archive.official-documents.co.uk/document/cm53/5326/cm5326.htm>

The beginning of the second phase of police reform was marked by the publication of a consultation document, *Policing: Building Safer Communities Together* in November 2003, which sought views on four key areas:

- community engagement - making the police more visible and accessible
- accountability, including possible radical change to police authority membership
- operational effectiveness, including through possible structural change
- Service modernisation

A summary of consultation responses was published in September 2004.¹²

D. The 2004 White Paper

In November 2004 the Government issued a White Paper, *Building Communities Beating Crime*. There were three main themes to the proposals:

1 “Revitalised community policing”

The paper proposed that by 2008, every community would “benefit from the level and style of neighbourhood policing they need”. This would involve the spread of neighbourhood policing teams with police officers working with police staff, community support officers and wardens. The Government also promised guaranteed national standards of service – dubbed a “copper’s contract” - to be in place by 2006¹³ and statutory minimum requirements for local policing information for householders. It would introduce a specific mechanism for triggering action by the police and local agencies, possibly through giving local councillors the right to do this.

2 Workforce modernisation

The White Paper envisaged a leadership role for constables in neighbourhood teams, and minimum powers for community support officers (the latter is discussed in more detail below).

3 Ensuring effectiveness

The paper proposed the creation of a National Policing Improvement Agency. The composition of police authorities would change, with the ending of the requirement for a separate category of magistrate member. Police authorities would have new duties to oversee relationships between Crime and Disorder Reduction Partnerships and neighbourhood bodies.

¹² Home Office, *Policing: Building Safer Communities Together Summary of consultation responses*, September 2004

¹³ See Blunkett proposes “Copper’s Contract”, *Guardian*, 15 September 2004

E. The Home Affairs Committee report on police reform

The Government's police reform was reviewed in a report published in February 2005 by the Home Affairs Committee, chaired by John Denham, who as a former Home Office minister in charge of police, had previously steered a number of the changes through. The report was a wide-ranging one, but some of the conclusions were summarised as follows:¹⁴

Most of our witnesses agreed that the overall direction of the police reform programme has been the right one. However, the implementation of the reforms has varied in its effectiveness. A shift between the first and second phases of reform, from a 'centralising' to 'localist' approach, has been generally welcomed. A focus on performance has been crucial to the reform agenda. We review the mechanisms by which the Government has sought to achieve this. We conclude that a performance culture has begun to embed itself in the police service. However, there is still scope for considerable improvement.

Some of the aspirations expressed when the reform process was launched have not yet been met—in particular, an improvement in the crime detection rate. We accept that this rate has a limited usefulness as an indicator of police effectiveness, because it does not distinguish between serious and minor crimes. Nonetheless, it is still a matter for concern that too few criminals are brought to justice. In the next phase of police reform more attention should be paid to improving the capacity of the police to detect crime. We emphasise the importance of the Government's target of increasing the sanction detection rate from 19% to at least 25% by 2008.

Overall it is right that the top priority should be crime reduction. The success of police reform will in large measure be judged by whether crime rates fall—and in particular by whether the new PSA target of a 15% fall by 2007-08 is met.

There is a confusing variety of bodies dealing with aspects of the police reform process, with unnecessary overlap between them. We accept the logic of the Government's proposal to create a Policing Improvement Agency, to rationalise many of these functions within a single body. However, we call for clarity about the role of the Agency and its relations with other organisations such as the Police Standards Unit. Responsibility for carrying out short-term interventions in underperforming forces should be separated from the long-term task of improving the overall skills base of the police service. We emphasise the importance of adequately resourcing the new Agency.

F. The Serious Organised Crime and Police Act 2005

Some of the White Paper's police reform proposals were introduced by the *Serious Organised Crime and Police Act 2005*. In addition to creating the Serious Organised Crime Agency, placing new controls on protests outside Parliament and introducing new powers to deal with harassment, the Act:

¹⁴ Home Affairs Committee, *Police Reform*, HC 370-1, 2004-05, 10 March 2005

- made all offences arrestable, subject to a necessity test
- allowed police staff to take on the role of custody officers
- required police authorities to publish an annual “local policing summary” from 1 April 2006

G. New strategic powers for the Home Secretary

Under the *Police Act 1996*, which consolidated previous legislation, the Home Secretary has a number of powers and duties in relation to policing. These include:

- a general duty to exercise his powers “to promote the efficiency and effectiveness of the police”
- powers to determine objectives for police authorities by order, to issue codes of practice for them, to set minimum budgets and require reports
- a power to give directions to police authorities where inspection has found these to be inefficient or ineffective
- a power to require a police authority to call upon a chief constable to retire in the interests of efficiency and effectiveness, following an inquiry

The *Police Reform Act 2002* added new powers and duties to the 1996 Act, including:

- a duty to prepare a National Policing Plan each year
- a power to issue codes of practice for chief officers
- a power to direct police authorities for forces judged to be inefficient or ineffective to take remedial measures and to submit action plans to deal with the problem
- a power to require the police authority to call for the *resignation*, as well as the retirement, of a chief constable in the interests of efficiency and effectiveness, again following an inquiry
- a power to require a police authority to suspend a chief constable for the maintenance of public confidence

The last of these was used in 2004 to require the suspension of the Chief Constable of Humberside, David Westwood, following the Soham murders and criticisms in the Bichard report. Initially the police authority refused, but was forced to following a High Court injunction.¹⁵ The Chief Constable went on to retire.¹⁶

The Bill makes the following changes to these powers and duties.

1 Annual policing plan and strategic priorities

The Bill would repeal the section giving the Secretary of State a duty to issue an annual National Policing Plan. Plans were issued in November 2002, 2003 and 2004. However, one of the proposals in the 2004 White Paper was to review Crime and Disorder Reduction Partnerships. The White Paper stated that, building on this review, the

¹⁵ “Blunkett wins police chief battle: Westwood suspended after high court ruling ends 10 days of defiance by Humberside authority”, *Guardian*, 4 July 2004

¹⁶ “Police chief to return – and then retire”, *Daily Telegraph*, 11 September 2004

Government would publish a wider Community Safety Plan, and it did so in November 2005, with the National Policing Plan included as an annex.¹⁷ The Government's Crime Reduction website sets out the reasons for the change:¹⁸

We recognise that community safety cannot be successfully delivered by the police alone - broadly-based partnerships are vital. Working together is the only way to achieve our goals. That is why we have decided to move beyond an annual National Policing Plan to a National Community Safety Plan.

It is sometimes difficult for local delivery partners to see evidence of cross-departmental planning when the Government launches new initiatives with a community safety aspect. This can leave those at local level – who are essential to successful delivery – uncertain about overall Government community safety priorities. The Plan addresses this issue.

There is no statutory obligation to issue an annual Community Safety Plan, and the Bill does not create one.

The Bill also repeals the power to set objectives for police authorities by order, and replaces it with a power to determine their strategic priorities. The Association of Police Authorities and the Association of Chief Police Officers would have to be consulted first.

2 Powers of intervention

Currently under section 40 of the *Police Act 1996*, (the current wording of which was introduced by the *Police Reform Act 2002*) the Home Secretary can direct police forces to take remedial measures, but only where there has been a negative inspection. The 2004 White Paper explained why in its view further changes were necessary:¹⁹

The Police Standards Unit has been engaged, on a non-statutory basis, with a number of target forces to help improve their performance. This represents a departure in terms of how the centre does business with the police service. And this activity represents an interim intervention of a kind not readily envisaged when the powers in the 2002 Act were first framed.

The Police Standards Unit engagements have proved successful in helping forces to turn around their performance. However, the Government has been concerned about the length of time it can take forces and authorities to put effective improvement plans into operation. However, the existing statutory intervention powers in the Police Reform Act 2002 are sometimes perceived as a 'nuclear' option. By way of improving and bringing clarity to the present position, **the Government therefore proposes to revise the existing statutory powers to take remedial action where police forces or Basic Command Units are underperforming. We propose putting the collaborative engagement and improvement process on a statutory footing; with powers of compulsion**

¹⁷ HM Government, *National Community Safety Plan 2005-2009*, November 2005

<http://www.crimereduction.gov.uk/communitysafety01a.pdf>

¹⁸ <http://www.crimereduction.gov.uk/communitysafety02.htm#1>

¹⁹ Cm 6360 pp 109-10

(i.e. intervention) arising only where sufficient improvement fails to transpire.

It went on to outline a two-stage process where a force was thought to be underperforming. The first stage would be a requirement for the force or authority to draw up an improvement plan. The second stage would involve powers of compulsion where there had been a failure adequately to deliver on the plan. The White Paper set out how this process would be triggered:²⁰

Currently, the Police Reform Act 2002 requires an adverse report from HMIC to ‘trigger’ the use of the existing intervention power. **As part of the process for amending the way the power works, the Government proposes to revise the trigger to bring it more into line with the wider set of information sources – other than an HMIC inspection alone – which now inform our views of police force performance.** Our proposal is that whilst the intervention decision would no longer be based on an adverse HMIC report alone, the Home Secretary would be under a duty to consult with HMIC and take into account their assessment before the intervention power is activated.

The new section 40 which the Bill would substitute allows for directions to forces or police authorities where “the Secretary of State is satisfied that the whole or any part of a police force is failing to discharge any of its functions in an effective manner”.²¹ New section 40A makes similar provisions to give directions to police authorities which the Home Secretary judges to be failing. In both cases, the Home Secretary must put evidence to the chief officer and the police authority that the force is failing, and they must be allowed to make representations and propose their own remedial measures. The Explanatory Notes state that these requirements are intended to ensure “that the power to give directions is only used as a last resort”.²²

3 Comment

An article in *Police Review* quotes a Home Office spokesman as saying:²³

“This will act as an incentive to police forces to enhance performance and make the powers that the Home Secretary has in the Police Reform Act 2002 to intervene in failing forces fit for purpose.(...) It is always the case that we only reach formal intervention stage if results are not forthcoming or forces are unwilling to engage. Intervention powers are very much ones of last resort”.

An article in the *Guardian* cited concerns by Conservative and Liberal Democrat spokesmen as well as ACPO:²⁴

²⁰ p 110

²¹ paragraph 24 of schedule 2

²² *Police and Justice Bill Explanatory Notes*, Bill 119-EN, <http://www.publications.parliament.uk/pa/cm200506/cmbills/119/en/06119x-a.htm>

²³ “Clarke wants more control of ‘poor forces’” *Police Review*, 27 January 2006 p7

²⁴ “Police bill fuels row over mergers of forces: Home Office hit squads to target failing divisions: Legislation to improve community policing”, *Guardian*, 26 January 2006

Sir Chris Fox, the president of the Association of Chief Police Officers, said last night that chief constables were concerned that Mr. Clarke was expanding his powers without professional advice.

"These measures may lead to more centralised direction at a time when forces are trying to give a local response to local problems," he said. His criticism was echoed by Conservative and Liberal Democrat spokesmen, who criticised the "trend towards central control of the police" and the "carte blanche for the home secretary to meddle in the affairs of police authorities". The Association of Police Authorities said the powers for the home secretary to change their role and membership represented a fundamental shift in power from local people to Whitehall. But Ms Blears said they were only powers of last resort and police forces would continue to work voluntarily with the Home Office's police standards unit.

ACPO's full comments can be found in a press release.²⁵

We are concerned that the change in the role of the HMIC seems to have resulted in the Home Secretary expanding his powers of intervention without professional advice from the Inspectorate. Performance measurement is not the only guide to effective policing and the more holistic Inspectorate evidence is comprehensive. We would be concerned that these measures may lead to more centralised direction at a time when forces are trying to give a local response to local problems.

An article on force mergers written for the *Western Daily Press* by the Conservative shadow Police Minister, Nick Herbert, criticised the provisions:²⁶

Under this Government, policing is increasingly being centralised. The Police and Justice Bill, published last week, creates a new national policing agency and gives the Home Secretary extended powers to intervene in local forces. Local police authorities are already relatively powerless and anonymous to the public. With mega-forces, and tighter Home Office control, they will be even further removed from local people.

David Cameron has set out an alternative approach, based on his key principles of sharing responsibility and trusting people.

Central control of the police would be replaced with direct local accountability through elected commissioners or police authorities, rebuilding the link between forces and their communities.

Former Conservative Home Secretary Lord Waddington raised a similar point in an oral question in the Lords:²⁷

Lord Waddington asked Her Majesty's Government:

²⁵ ACPO Press Release, *Bill provides support for more effective policing*, 25 January 2006, [http://www.acpo.police.uk/pressrelease.asp?PR_GUID={19FA2C68-1F01-4CAD-B42C-7038C8FDB97C}](http://www.acpo.police.uk/pressrelease.asp?PR_GUID={19FA2C68-1F01-4CAD-B42C-7038C8FDB97C)

²⁶ Price we'll pay to merge our police, *Western Daily Press*

²⁷ HL Deb 7 February 2006 c503

How they propose to ensure local accountability of policing if current police authorities merge.

Lord Bassam of Brighton: My Lords, we have had extensive discussions with the Association of Police Authorities and others about how to strengthen local accountability as we move to strategic police forces. Central to that will be the roll-out of neighbourhood policing by 2008. In addition, we are strengthening the effectiveness of crime and disorder reduction partnerships to ensure that local police commanders and other partners are answerable to the communities that they serve.

Lord Waddington: My Lords, I thank the Minister for his reply. Does he agree that the, "wholesale amalgamation of the smaller police services . . . will remove local policing further from local people when there is no evidence that it will create a more effective police service"—[*Official Report*, Commons, 5/7/94; col. 273.] Those were the words of the Prime Minister when in opposition in 1994. Furthermore, is it not obvious that a few regional forces will be far more easily controlled by the Home Secretary than the present 43 forces? When, in addition, the Home Secretary has the sweeping powers that he will be given if the police and criminal justice Bill becomes law to give orders to chief constables on how to run their forces, will we not have taken a gigantic step towards a national police force?

Lord Bassam of Brighton: My Lords, I am intrigued by the quotation from 1994—12 years ago. Much has changed since then. The public want to see more police officers on the streets, and under Labour they have. They have also seen a 35 per cent reduction in crime. That has been achieved under Labour in government. We need effective strategic police authorities and local accountability to ensure that the basic command units work well to deliver the policing service that we need in the future.

H. Police authorities

1 Structure and functions

Under section 4 of the *Police Act 1996* most police authorities have 17 members: nine local councillors; three magistrates; and five independents. The Metropolitan Police Authority has 23 members. Police authorities' fundamental statutory duties are to maintain an efficient and effective police force, and to secure best value in local police services.

Police authorities hold the budget and decide how much council tax should be raised for policing. They are required to set three year strategy plans,²⁸ annual local policing objectives²⁹, and issue an annual local policing plan for the area.³⁰ Every authority is also required to issue an annual report on the policing of its area in the previous year. As noted above, there is now a new requirement, introduced as part of the Government's

²⁸ section 6A

²⁹ section 7

³⁰ section 8

stated aim in the 2004 white paper, to produce a local policing report for every home from April 2006.³¹

In exercising its functions, the authority is required to have regard to any objectives determined by the Secretary of State, any local objectives or performance targets which it has established and any code of practice issued or directions given by the Home Secretary under the Act.

Section 96 of the *Police Act 1996* requires police authorities to make arrangements for obtaining the views of people in the area covered by their police force about matters concerning the policing of the area and for obtaining their co-operation with the police in preventing crime in the area. This provision, which originated in the *Police and Criminal Evidence Act 1984*, implemented a key recommendation by Lord Scarman in his report on the Brixton riots of 1981.³²

Section 11 of the *Police Act 1996* gives individual police authorities the power to appoint the chief constables of the forces for which they are responsible, subject to the approval of the Home Secretary. A police authority also has the power under this section of the Act to call upon its chief constable to retire or resign in the interests of efficiency or effectiveness, although once again it must obtain the approval of the Home Secretary.

Police authorities are also Best Value Authorities under Part 1 of the *Local Government Act 1999* and therefore have a responsibility to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.³³ In addition, they have responsibilities under the *Police Reform Act 2002* for monitoring the handling of complaints by the police force, and considering any complaints against the chief constable.

2 Problems

One issue, given the Government's stated aim of involving citizens and communities more in policing, is that public understanding of police authorities is very limited. In 2003, the Home Office published a research report into the role of police authorities in involving the public in decisions about policing.³⁴ The vast majority of the public who were questioned had not previously heard of police authorities and did not know what their role was, and the report found that "people wanted better communication, information and involvement". It concluded:

Police authorities have begun to develop more innovative and strategic approaches to engaging the community, but progress is patchy. Many authorities, though, are reviewing their approaches, showing that they recognise the need to engage more effectively. It can be argued that authorities cannot provide true

³¹ section 89A inserted by section 157 of the *Serious Organised Crime and Police Act 2005*

³² Home Office, *The Brixton Disorders 10-12 April 1981, Report of an Inquiry by the Rt Hon The Lord Scarman O.B.E.*, Cmnd 8427, November 1981,

³³ See Library Standard Note SN/PC/561

³⁴ Home Office, Andy Myhill et al, *The role of police authorities in public engagement*, Home Office Online Report 37/03, 2003, <http://www.homeoffice.gov.uk/rds/pdfs2/rdsolr3703.pdf>

accountability or engagement while largely invisible to the public, as they are at present. However, there was not a consensus amongst stakeholders that a higher public profile and separate identity for authorities was the way forward. This suggests that a wider debate is needed about the role of authorities in community engagement.

Another problem which has been identified is that the appointment process for independent members, which is a very cumbersome one.³⁵ This mechanism was the subject of a Home Office review which concluded that the process needed to be streamlined, not least because of the difficulties in recruiting them.³⁶

3 Government proposals

In November 2003, the Government published a Green Paper on policing, with a closing date for responses of 27 January 2004.³⁷ This suggested a number of ways of strengthening accountability. One option was for the new arrangements just to continue to provide oversight of the police force, with police boards replacing police authorities in carrying out this task. However, another potential model would involve a “bottom up” approach, with:

- neighbourhood Panels at a very local level
- local Policing Partnerships or Community Safety Boards at the Basic Command Unit level
- a Strategic Policing Board at force level

The November 2004 White Paper set out the Government’s starting point for reforming the system as follows:³⁸

The Government explored these issues in its 2003 consultation paper on police reform. The approach set out in this paper to building a more responsive, citizen-focused police service – which has a deeper, stronger connection with the public – needs to be underpinned, we believe, by people having the opportunity to have a real say in how their local areas are policed. And we need to put in place stronger, clearer, more transparent ways of ensuring that those with a responsibility for ensuring that individuals and families live in safe communities are held effectively to account for their performance in carrying out those responsibilities. The Government believes this is vital to building public trust and confidence in policing.

On the composition of authorities, the paper proposed that:

- most police authorities would retain a membership of 17, with the maximum being 21

³⁵ A useful brief description can be found at <http://police.homeoffice.gov.uk/police-reform/reform-programme/Police-support/membership-police-authorities>

³⁶ Home Office, *Review of the Selection and Appointments Process of Independent Members of Police Authorities*, Kenneth Hamer (chairman), 2004

³⁷ Home Office, *Policing: Building Safer Communities Together*

³⁸ Cm 6360, paragraph 5.85

- where police force areas only include unitary council areas, each council should appoint its cabinet member with responsibility for community safety to the police authority
- candidates for the position of police authority chairs should be subject to a competency-based selection process overseen by the Office of the Commissioner for Public Appointments, although thereafter they will continue to be elected by the authority
- there should not longer be a separate category of magistrate member
- independent members should continue but their appointment should be judged against a competency-based framework of criteria
- arrangements for the City of London Police and the Metropolitan Police should not change, because the Metropolitan Police Authority has only been existence since 2000

The White Paper proposed that police authorities would be subject to independent inspection, as police forces are, on how they discharge their full responsibilities. Currently they are only subject to inspections on how they fulfil the “best value” requirements of the *Local Government Act 1999*.

It also proposed the following new duties for police authorities to:³⁹

- take into account local policing priorities identified at Crime and Disorder Reduction Partnership (CDRP) level when developing force policing plans and strategies;
- oversee the relationship between CDRP and neighbourhood bodies, and ensure the implementation of citizen involvement – making sure that these arrangements are not overly bureaucratic;
- co-operate with neighbouring authorities to help tackle cross border crime – known as ‘level two’ crime – and analyse the effectiveness of their own forces’ performance in doing so
- promote diversity within the police force and authority;
- conduct the chief constable’s performance appraisal and to decide pay and bonuses – with a formal requirement to consult Her Majesty’s Inspectorate of Constabulary in doing so; and
- request inspection by HMIC or intervention by the Police Standards Unit in respect of their force or particular parts of it where they consider this to be necessary.

4 The effect of police force restructuring on police authorities

This Bill does not provide for police restructuring, partly because negotiations are still going on, but mainly because primary legislation is not necessary for most aspects. Sections 32 to 34 of the *Police Act 1996* allow for the alteration of police force areas in England and Wales by secondary legislation, with the exception of the City of London police area. Under these provisions the Secretary of State may make an order either if he has received a request to make alterations from the police authorities for each of the areas affected by them (in which case the negative resolution procedure applies), or if it

³⁹ Cm 6360, pp 126-7

appears to him that it is expedient to make the alterations in the interests of efficiency and effectiveness (in which case the affirmative procedure applies).

However, these reforms will clearly have a considerable impact on police authorities. Larger “strategic forces” will presumably mean larger “strategic police authorities”, though very little has currently been published on what the Government envisages. On 6 December 2005, the Home Secretary wrote a letter to Bob Jones, chairman of the Association of Police Authorities, hoping to address a number of concerns about restructuring which the APA had raised. One of these was accountability. Charles Clarke stated that he thought restructuring presented “a good opportunity to embed more accountability” at the level of Basic Command Units and Crime and Disorder Reduction Partnerships:⁴⁰

One model that seems promising to me is to develop policing boards to which would be transferred a number of the existing functions of police authorities. The policing board would set local policing priorities in consultation with communities and hold the BCU commander to account for the delivery of the policing plan for the area.

A similar approach was outlined in a written answer to a PQ on 9 January 2006⁴¹ However, neither the Bill nor the Explanatory Notes make any mention of police boards. Instead the Bill introduces the “Community Call to Action” (see section IV.D of this Research Paper below) and gives local authority overview and scrutiny committees a new role in scrutinizing Crime and Disorder Partnerships – see section IV.B below.

The letter went on to set out that “strategic police authorities” should have a maximum of 23 members, like the Metropolitan Police Authority. They would still have a mix of councillors, who would be in the majority, magistrates and independent members, although as the White Paper had stated, magistrates would no longer be a separate category, but would count as independents. The letter went on to explain how the authorities would be constituted immediately following amalgamations:

To enable the precursor police authorities to have a key role in establishing strategic forces, I propose that any amalgamation order made under section 32 of the 1996 Act would provide for the members of new strategic authority to be selected by the precursor police authorities from amongst their membership. There would need to be a backstop provision whereby the selection was made by the Home Secretary in the absence of agreement; I hope and expect, however, that it would not be necessary to exercise this power. I envisage that the members of new strategic police authorities would be appointed for a transitional term of two years, by which time I anticipate that we would have the legislation in place to enable us to reconstitute police authorities along the line proposed in the White Paper.

⁴⁰ Letter from Home Secretary to Bob Jones, APA chairman, 6 December 2005 <http://police.homeoffice.gov.uk/police-reform/Force-restructuring>

⁴¹ HC Deb 9 January 2006 c379W

It went on to explain that the *Police and Justice Bill* would “introduce greater flexibility into the 1996 Act so that we may, for example, add to the functions of police authorities without resort to further primary legislation.”

5 Commentary on the future of police authorities following restructuring

As part of the Government’s plans to restructure police forces, described in 1.B of this Research Paper above, both forces and police authorities were asked to submit proposals to the Home Office by 23 December 2005. However, the Association of Police Authorities reported that police authorities were refusing to submit full business cases by this deadline until they had received further assurances.⁴² In an article in *Police Review* the vice-chairman of the APA stated that this was not because they were necessarily opposed to larger policing units, but because they considered the process was being “unreasonably rushed” with “no adequate analysis of the financial impact and little or no debate about the merits of the change either nationally or locally”.⁴³

In an article in *Police Review*, academic commentator Tom Williamson suggested that the failure of police authorities to submit final business cases by the Home Secretary’s deadline could be “akin to writing a suicide note”. Professor Williamson argues that there has been a “paradigm shift” away from the “cosy notion” of a tripartite relationship between police forces, police authorities and the Home Secretary:⁴⁴

Legislation has concentrated power in the Home Secretary, who sets the National Policing Plan and specifies outcomes. In this new public management paradigm, chief constables have an executive function only which is to deliver the plan.

(...)

Following force amalgamations, a few chief constables, reporting to a senior Home Office official in regional Government offices, will be even more centrally influenced and controlled than is possible with the current structures, which have been likened to an attempt to herd cats.

The article goes on to suggest that police authorities are of questionable relevance, and speculates that the Government might move to replace through some form of purchaser/provider split, as they are currently introducing into probation.⁴⁵

Professor Williamson’s view is rejected by the vice-chairman of the APA:⁴⁶

The alternatives to police authorities whose set-up currently allows a wide scope of local views to be heard would be almost certain to involve either further centralisation, or systems which could increase the risk of one-party political control. Given the choice, we are confident local communities would prefer the

⁴² APA Press Release, “Police authorities reject restructuring deadline”, 22 January 2005, <http://www.apa.police.uk/APA/Press+Releases/>

⁴³ “Why we need police authorities”, *Police Review*, 27 January 2006, p15

⁴⁴ “Why do we need police authorities?”, *Police Review*, 20 January 2006, p12

⁴⁵ See Library Standard Note SN/HA/2932

⁴⁶ “Why we need police authorities”, *Police Review*, 27 January 2006, p15

checks and balances provided by the present structure of police authorities than untested and centrally controlled alternatives.

A more recent article by another academic commentator, Dr Stephen Brookes, a former police superintendent and Home Office regional director, also disagreed with Professor Williamson's view that fewer forces necessarily mean more central control, and argues the need to distinguish between governance and accountability:⁴⁷

At a regional level, a strategic authority could remain accountable to the centre (whether directly or through a regional office) for policing at crime levels 2 and 3.⁴⁸ The authority could also undertake a 'governance' role to ensure that locally based policing strategies fit comfortably with national priorities.

More important would be a responsibility to govern local accountability from the basic command unit commander to the local communities.

6 The Bill

As the Home Secretary's letter to the APA on 6 December 2005 had indicated it would, the Bill introduces greater flexibility for the Government in altering the structure and functions of police authorities, by removing some of these provisions from the primary legislation and replacing them with order-making powers.

Paragraph 3 of Schedule 2 provides for the detailed provisions for the composition of police authorities to be set down in regulations subject to the negative resolution procedure. Thus, following force amalgamations (which, as noted above, can already be done mainly through orders) the consequential changes to police authorities could also be made without further primary legislation.

Paragraph 9 of Schedule 2 adds to the general functions of police authorities in the 1996 Act, which, as noted above, are to secure the maintenance of an effective and efficient police force. The new duty is "to hold the chief officer of the force to account for the exercise of his functions and those of the police officers and police staff under his control". This was something for which the Association of Police Authorities had argued in their response to the 2003 Green Paper.⁴⁹ The 2004 White Paper indicated that the Government considered that this "crucial role" needed re-stating,⁵⁰ and the December 2005 letter to the APA set out the Government's intention to do this in legislation:⁵¹

As you suggest, the importance of a police authority's role in holding the chief officer to account for the exercise of his/her functions will be reinforced in the new landscape and it is for that reason I intend to amend the Police Act 1996 to expressly provide for this as one of a police authority's core functions.

⁴⁷ "The value of police authorities", *Police Review*, 10 February 2006

⁴⁸ See section 1B of this Research Paper above

⁴⁹ Association of Police Authorities, *Building communities beating crime A better police service for the 21st Century*, February 2005, paragraphs 9 and 53 <http://www.apa.police.uk/NR/rdonlyres/2CD36856-18E2-4A0D-A4A4-EAF0D88397A2/0/BuildingCommunitiesBeatingCrimeAPAResponse.pdf>

⁵⁰ Cm 6360, p 126

⁵¹ Letter from Home Secretary to Bob Jones, APA chairman, 6 December 2005, <http://police.homeoffice.gov.uk/police-reform/Force-restructuring>

Paragraph 10 contains a power to confer particular functions on police authorities, again by order subject to negative resolution procedure. Examples given in the paragraph include human rights compliance, securing co-operation in tackling cross border crime, and promoting diversity, but these are not exclusive.

Paragraphs 11-16 replace the provisions in the 1996 Act which require police authorities to produce a three-year strategy, set local policing objectives and issue a local policing plan and annual reports (see section I.F.1 of this Research Paper above). Instead, the Secretary of State will be able to require police authorities to determine objectives and issue plans and reports by order.

Clause 3 of the Bill abolishes the requirement for local authorities to conduct best value reviews and prepare best value plans. The Regulatory Impact Assessment explains this as follows:⁵²

The Best Value regime was established under the Local Government Act 1999. Best Value arrangements exist to secure continuous improvement in the performance of functions by public service organisations. The regime involves conducting reviews to consider new approaches to delivery. With the onset of the Policing Performance Assessment Framework and HMIC baseline assessment, both of which are delivering significant benefits in driving up police performance, reviewing policing functions through the best value reviews is not seen as the most effective vehicle. We therefore propose to disapply the requirement for police authorities to have to conduct Best Value Reviews and prepare Best Value Performance Plans. This measure is deregulatory and will result in a reduction of bureaucracy.

7 Comment on the Bill

The Liberal Democrats have expressed concern about these regulation-making powers in a press release from their policing spokesperson, Lynne Featherstone:⁵³

The Bill gives the Home Secretary carte blanche to meddle in the composition of police authorities without having to ask for Parliamentary approval. It gives absolutely no reassurance to those of us who fear the loss of local accountability under the police merger plans.

The Association of Police Authorities is also concerned about this aspect of the Bill:⁵⁴

APA Chairman, Bob Jones said “The APA supports measures that will help us to reduce crime and disorder or better protect local people. There are aspects of

⁵² Home Office, *Overarching Regulatory Impact Assessment*, Annex, paragraph 9 : http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/P_J_Bill_Overarching_RIA_1_.pdf?view=Binary

⁵³ Liberal Democrat Press Release, *Police and Justice Bill a missed opportunity* – Featherstone, 25 January 2006, <http://www.libdems.org.uk/news/story.html?id=9619>

⁵⁴ Association of Police Authorities Press Release, *Listen to communities on police restructuring*, Association of Police Authorities, 25 January 2006, <http://www.apa.police.uk/APA/Press+Releases/2006/25+JANUARY+2006.htm>

this Bill which we support, such as the National Policing Improvement Agency. We also welcome the way the Home Secretary has listened to our views on the new Community Call for Action and the proposals to improve Crime and Disorder Reduction Partnerships to make them more answerable to communities.

But this Bill will reduce the local accountability of the police, not strengthen it, as the Government claims. Governance of local policing is currently shared between the Home Secretary, police authorities and police officers to keep the police free from direct political control. This tripartite relationship contains careful checks and balances which could be put in jeopardy by the Police and Justice Bill.

The Home Secretary is now proposing to give himself power to change the role and membership of police authorities, thus weakening the voice of local communities and the bodies which represent them. Only parliament, not the Home Secretary, should be able to do this. The Bill represents a fundamental shift of control over policing from local people to the Home Secretary. The APA is disappointed that the Government's proposals seek to shift the balance, and we will continue to vigorously uphold the principal of local accountability.'

I. National Policing Improvement Agency

1 Oversight of police performance

There are a number of agencies which exist to oversee police performance. Her Majesty's Inspectorate of Constabulary has existed for nearly 150 years. Its role is to promote the efficiency and effectiveness of policing through inspection of police organisations and functions to ensure:

- agreed standards are achieved and maintained;
- good practice is spread; and
- performance is improved.

It also provides advice and support to the Home Secretary, police authorities and forces.⁵⁵

The Police Standards Unit, which is an internal unit in the Home Office, was set up in July 2001 to "identify and disseminate best practice in the prevention, detection and apprehension of crime in all forces".⁵⁶ The Home Office's Police Leadership and Powers Unit has also been established to "improve police effectiveness and public confidence in the police by developing and implementing the Home Secretary's policies on police training and development."⁵⁷

The National Centre for Policing Excellence (NCPE) was set up in April 2003 to identify, develop and spread good practice in operational policing throughout the service. It is

⁵⁵ <http://inspectors.homeoffice.gov.uk/hmic/docs/hmicrole.pdf?view=Binary>

⁵⁶ Home Office, *Policing a New Century a Blueprint for Reform*, p147 http://www.archive.official-documents.co.uk/document/cm53/5326/policing_survey.pdf

⁵⁷ <http://police.homeoffice.gov.uk/police/no-section-mapping/leadership-powers-unit.html>

operated by Centrex, the Central Police Training and Development Authority, which itself provides training and advice to the police service.

The following PQ sets out the Government's view on how some of these bodies interrelate:⁵⁸

Mr. Cameron: To ask the Secretary of State for the Home Department what steps the Government are taking to ensure consistency between advice given to the Police by (a) the National Centre for Policing Excellence, (b) the National Policing Improvement Agency, (c) the Police Science and Technology Unit, (d) Police Powers and Leadership Unit and (e) Her Majesty's Inspectorate of Constabulary. [201139]

Ms Blears: The various bodies concerned with delivering improved policing outcomes work together to ensure that consistent advice is provided to the police. The Police Leadership and Powers Unit (PLPU) works closely with Her Majesty's Inspectorate of Constabulary. Consistency with the National Centre for Policing Excellence (NCPE) is ensured by PLPU's role as the sponsor unit for CENTREX, the national police-training provider, of which the NCPE is a directorate.

The 'Improving Performance through Applied Knowledge' (IPAK) programme of work, led by the Police Standards Unit, is aimed at improving the development and dissemination of good practice in the policing community. This includes working approaches to avoid overlaps or gaps between the work of stakeholder organisations, including the NCPE, HMIC, and PLPU. In the field of science and technology, a consistent approach is co-ordinated through the Police Science and Technology Strategy Group, which is chaired by the Director of Policing Policy in the Home Office. This group includes the director of the NCPE, the heads of the Science Policy and the Information Communications Units, and a senior representative from HMIC. The Group will also include an appropriate representative from the National Policing Improvement Agency when the detailed composition and scope of the Agency has been agreed.

Finally, an important driver behind the Improvement Agency will be to rationalise the number of bodies that provide advice and assistance to the police service, thereby further ensuring consistency. The details of this are still being considered.

When the Home Affairs Committee was taking evidence on police reform, some witnesses complained that there was a "confusing variety of bodies charged with the oversight of various aspects of the police reform process", and that there was "unnecessary overlap between these bodies".⁵⁹

2 The announcement of the new agency

The Home Office's Five Year Strategic Plan published in July 2004 announced the intention to establish a National Policing Improvement Agency.⁶⁰ The proposal had its

⁵⁸ HC Deb 8 December 2004 c644W

⁵⁹ Home Affairs Committee, *Police Reform*, HC 370-1, 2004-05, 10 March 2005, para 50

⁶⁰ Cm 6287, cited above, p 66

origins in the response submitted by the Association of Chief Police Officers to the November 2003 Green Paper.⁶¹ Further details were given in the 2004 White Paper:⁶²

At present, the mechanisms for national policing improvements are disparate and overlapping. The lines of accountability and responsibility are often blurred. The Agency is intended to change this by providing a radically different model of police service participation in the process of continuous improvement. We want to enable the police service and its leaders to have a much more systematic – and full time – role in the process of developing standards and operational capability. This will be combined – for the first time – with those functions of the Home Office and other national bodies concerned with how the Service discharges its operational activities. It is essential that the culture of the Agency should be professionally driven but outward looking – connected to the citizen and committed to working in partnership with others.

5.44 The Agency will have clear authority to deliver in the following three core areas:

- good practice development – refinement and codification of core policing processes and competencies;
- an implementation support function – working with forces and others to provide capacity and assistance to implement swift change on key mission critical policing priorities; and
- operational policing support.

The White Paper went on to state that the Agency would be able to require forces to implement certain objectives:⁶³

It is hoped that the position of the Agency, as well as the stakeholder sign up implied by the process for setting priorities, will secure rapid nationwide delivery. However, the Agency will have the ability – where this does not transpire – to require forces to implement mission critical objectives at a rate (and in a manner) that it deems appropriate. The Agency would make active use of existing powers and the Regulations/ Codes of Practice regime to achieve this.

3 The Police Information Technology Organisation (PITO)

The Police Information Technology Organisation (PITO) was formed in 1998 under the *Police Act 1997* to “carry out activities (including the commissioning of research) relating to information technology equipment and systems for the use of police authorities and police forces” and other bodies.⁶⁴

⁶¹ <http://police.homeoffice.gov.uk/police-reform/policing-improvement-agency/>

⁶² Cm 3630 cited above, p112

⁶³ Paragraph 5.48

⁶⁴ section 109

A review of PITO was commissioned by Home Office Minister Hazel Blears in January 2004. The report, dated February 2005, but not published until June 2005,⁶⁵ was critical of the present structure and organisation of police ICT, stating that it:⁶⁶

(...) lacks clear definition or purpose, results in confused lines of responsibility and is almost certainly poor value for money.

It concluded that, whilst PITO has some successes over the years, it “has largely failed to meet the needs of the police, partly through its own shortcomings but principally because PITO as a concept is fundamentally flawed”. This was partly because of the “tripartite” governance arrangements, both of PITO, and of policing itself.⁶⁷

The conclusion from these arguments is inescapable; the present structure and organisation of police ICT is unsatisfactory. There is a lack of clarity of definition and therefore purpose, confused lines of responsibility and accountability, and inadequate delivery. In addition there is evidence of under-achievement and poor value for money. The premise made in the mid-nineties that the best way to set up an ICT delivery capability to forces was through a Home Office driven NDPB, supported by a tripartite governance structure, hasn't stood the test.

The PITO review noted the Government's proposals for a National Policing Improvement Agency, and set out its own preferred model for how it should deal with ICT issues.⁶⁸

4 The Bill

Clause 1 abolishes Centrex and PITO, and establishes the new National Policing Improvement Agency. Schedule 1 gives the details. The Agency's objectives include promulgating good practice, advising police forces, identifying threats and opportunities to police forces, international sharing of understanding of police issues and providing support to forces over IT, procurement, training and personnel matters. The Secretary of State may determine strategic priorities for the agency, after consulting organisations such as ACPO and the APA and (where appropriate) Scottish ministers. The Secretary of State will be able to require the Agency to report on specific matters, and it will be subject to inspection by the new Justice, Community Safety and Custody inspectorate (see below).

5 Comment

ACPO, which first suggested the NPIA, has welcomed its introduction.⁶⁹

The establishment of a National Policing Improvement Agency (NPIA), called for by ACPO, will bring a focus to the delivery of the police reform agenda through

⁶⁵ HC Deb 23 June 2005 c46-7WS

⁶⁶ Home Office, *The Report of the Review of the Police Information Technology Organisation (PITO)* February 2005, http://police.homeoffice.gov.uk/pdfs/Report_Review_of_PITO.pdf?view=Binary

⁶⁷ p86

⁶⁸ PITO review, pages 6-8

⁶⁹ ACPO Press Release, *Bill provides support for more effective policing*, 25 January 2006, http://www.acpo.police.uk/pressrelease.asp?PR_GUID={19FA2C68-1F01-4CAD-B42C-7038C8FDB97C}

the prioritisation of initiatives and their work with forces to modernise the police service and make it fit for 21st century policing.

Sir Chris Fox, President of the Association of Chief Police Officers, said:

"We broadly welcome the provisions and aims of this Bill. British society has changed dramatically and the police service must change with it. The NPIA will work with forces in driving through change, which, combined with effective powers and the implementation of neighbourhood policing across the country, will lead to a more effective police service and safer communities. It must, however, be a collaborative Agency, as accountability for police performance will remain with Chief Constables.

The Police Federation is concerned to ensure that the NPIA should consult with all staff associations, and hopes that the rationalisation will lead to greater clarity:⁷⁰

Aside from the precise wording of the provisions contained within the Police and Justice Bill, it is important that the NPIA brings clarity to the review of police performance. At present there are a myriad of different organisations assessing police performance, from the Police Standards Unit (PSU) and the Audit Commission to local and regional government and Her Majesty's Inspectorate of Constabulary (HMIC). All of these organisations require their own unique set of figures and information which creates a bureaucratic strain on forces. Moreover there is a considerable degree of overlap between them which can lead to costly duplication of effort.

J. Basic Command Units

As section II.A of this paper set out, Basic Command Units (BCUs) are the main operating units of police forces, covering areas such as a town or district.

The Bill would put BCUs on a statutory footing for the first time. BCUs' boundaries would have to be the same as local authority areas, except with the Secretary of State's consent.⁷¹ In fact, most BCUs are now coterminous with local authority boundaries as the Regulatory Impact Assessment makes clear:⁷²

Legislation is currently silent on the internal organisation of police forces. As a matter of practice, forces are divided up in to two or more geographical areas known as Basic Command Units. BCUs are typically coterminous with local authority areas, but there are a few examples in which this is not the case. It is generally acknowledged that a lack of coterminosity hampers effective partnership working between BCUs and local authorities. In recognition of the importance of BCU and local authority boundaries coterminosity we will place BCUs on a statutory footing and require that they are coterminous with local authorities except with the Secretary of State's consent.

⁷⁰ Police Federation, *Parliamentary Briefing Paper Police and Justice Bill (2005)*, 20 February 2006, [http://www.polfed.org/210206HouseofCommons Second Reading briefing.pdf](http://www.polfed.org/210206HouseofCommons%20Second%20Reading%20briefing.pdf)

⁷¹ Schedule 2

⁷² Home Office, *Police and Justice Bill Overarching Regulatory Impact Assessment*, http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/P_J_Bill_Overarching_RIA_1_.pdf?view=Binary

There are currently some 229 BCUs of which 199 are fully coterminous. Reviews are already being conducted or plans are in motion to move a further 22 to coterminous arrangements. This leaves 8 BCUs that do not currently have plans to move their boundaries to achieve coterminosity. The legislation will formalise existing arrangements and sweep up the remaining non-coterminous BCUs. The costs of changing the boundaries will vary from case to case, depending on the scale of the change required – in 6 of the 8 cases the change required to achieve coterminosity will be very small. As now, forces will continue to periodically redefine their BCU boundaries and costs will continue to be absorbed within existing force budgets.

This change is linked to the provisions in Part 3 of the Bill to improve the scrutiny of Crime and Disorder Reduction Partnerships, which are discussed in section III.C of this Research Paper below.

The Local Government Association welcomes this move.⁷³

The LGA welcome the proposal for requiring co-terminosity between police Basic Command Units (BCU) and councils, which will enhance accountability to local communities.

The Police Federation has said that BCU status needs “further clarification” in the Bill:⁷⁴

Basic Command Units are the building blocks units with which policing is delivered at a neighbourhood level. Given the importance of neighbourhood policing to combating all levels of crime, in addition to the background of force amalgamations, it is vital that all BCUs are fit for purpose.

We have two contrasting concerns with granting BCUs further autonomy. If BCUs were to evolve into stand alone units almost totally autonomous from force decisions we fear that this would have a negative impact on force performance. Superintendents, rather than Chief Officers, effectively dictating policy would threaten resilience as it could affect mutual aid between forces and, at a more local level, cooperation between BCUs.

Paradoxically, changes to BCUs’ status could increase the control of policing by the Home Office, but with reduced central accountability. Budgetary control and monitoring of individual BCUs from the centre cannot be ruled out as the Bills stands. We believe this would be contrary to the spirit of the Government’s commitment to neighbourhood policing delivered by individual police forces. For this reason we hope to see BCUs’ status clarified during the passage of the Bill.

⁷³ ,Local Government Association, *LGA key messages on the Police and Justice Bill*, 26 January 2006, <http://www.lga.gov.uk/Briefing.asp?lsection=64&id=SXF58E-A7836E75&ccat=1156>

⁷⁴ Police Federation, *Parliamentary Briefing Paper Police and Justice Bill (2005) House of Commons: Second Reading* 20 February 2006 http://www.polfed.org/210206HouseofCommons_Second_Reading_briefing.pdf

K. Standard powers for Community Support Officers

Community Support Officers (CSOs), often known to the police as Police Community Support Officers (PCSOs), are employed by the Police Authority, under the control of the Chief Officer. Unlike special constables, they are not sworn constables, and do not have full police powers. They were introduced during 2002-03 by the *Police Reform Act 2002* in order to carry out basic patrol functions, provide a visible presence, and deal with low level crime and nuisance.

Chief constables can choose whether or not they use CSOs. In September 2005, over 6,300 CSOs were working, and all forces had at least some.⁷⁵ The Government is committed to increasing the numbers of CSOs to 24,000 by the end of March 2008.⁷⁶ The Home Office Strategic Plan 2004-2008 announced a Neighbourhood Policing Fund, incorporating existing funding such as the Crime Fighting Fund, existing CSO funding and funding for special constables, but with £50 million of new money, to fund the additional CSOs.⁷⁷ However, the Government is encouraging police authorities and forces to obtain additional funding for CSOs from other sources, such as local businesses and other streams of Government funding.⁷⁸

1 Evaluation of CSOs

In evidence to the Home Affairs Committee, Her Majesty's Inspectorate of Constabulary, the Association of Chief Police Officers and the Association of Police Authorities all commented that the introduction of CSOs had been very successful, although the Police Federation was deeply sceptical and reported confusion and divided opinion about CSOs amongst police officers.⁷⁹ The Committee's own conclusions were as follows:

172. It is clear that Community Support Officers have proved popular with the public in their role as high-visibility patrollers. The Government's proposed expansion in CSO numbers was supported by most of our witnesses, though not by the Police Federation which represents uniformed officers. Several witnesses made the point that CSOs are most useful when they work in close liaison with police officers, and that any extension of their powers which reduced their street presence would be counter-productive. We agree with this assessment. We also think it is desirable that individual police forces and police authorities should be given the flexibility to decide for themselves whether they wish to spend extra resources on CSOs or on other personnel or activities. We recommend that the arrangements drawn up by the Home Office for the proposed neighbourhood policing fund should make allowance for such flexibility, allowing local communities to take decisions in the light of local priorities.

⁷⁵ Home Office Statistical Bulletin 12/05. For further information, see Library Standard Note SN/SG/634, *Police Service Strength*, 6 February 2006

⁷⁶ HM government, *National Community Safety Plan 2006-2009*, November 2005, p 28, <http://www.crimereduction.gov.uk/communitysafety01a.pdf>

⁷⁷ Home Office Strategic Plan, *Confident Communities in a Secure Britain*, Cm 6287, July 2004, p 66 <http://www.homeoffice.gov.uk/documents/strategicplan.pdf?view=Binary>

⁷⁸ Home Office, *Good Practice for Police Authorities and Forces in Obtaining CSO funding*, 2006, http://police.homeoffice.gov.uk/news-and-publications/publication/community-policing/Matched_funding_good_practice?view=Binary

⁷⁹ Home Affairs Committee, *Police Reform*, HC 370-1, 2004-05, 10 March 2005, paras 160-172

Various local evaluations of CSOs have been carried out since their introduction. A national evaluation was published January 2006, which found that they are generally well regarded:⁸⁰

The evaluation showed that CSOs were providing a service that was highly valued by the public, businesses and police officers. They were more of a visible and familiar presence than police officers, who had other demands on their time. The accessibility and approachability of CSOs meant that the public were more likely to pass on information to CSOs that they may have felt was too trivial for a police officer. The public appreciated the CSOs' role in engaging with young people and dealing with ASB. The diversity of CSOs, particularly in terms of ethnicity and age, has been one of the successes of the implementation of the role.

There is evidence that CSOs have the potential to be, and have been, successful in many neighbourhoods. They have carried out high visibility patrol that has led to greater levels of reassurance amongst the public, the tackling of youth disorder and more contact and engagement with the community.

However, it did highlight some aspects of their deployment which needed further consideration, including turnover, supervision and training.

2 CSOs' powers

There is a menu of potential powers in the 2002 Act, and Chief Constables can decide which, if any, of these CSOs can be designated with.

The November 2004 White Paper stated the Government's intention to develop a minimum set of powers for CSOs⁸¹, and on 31 August 2005, the Home Office published a consultation paper.⁸² This set out that in the Government's view there are "significant drawbacks to the current situation":

3. The public currently have no way of knowing what the powers of CSOs are from one force to the next. This is confusing and disorientating, and leads many members of the public to think that CSOs have no powers at all. Also, it means that in some forces CSOs do not have sufficient powers to play a full part in neighbourhood policing and have a role more similar to that of wardens. For these reasons we think that it is sensible to standardise the powers designated to CSOs and we intend to legislate for a set of standard powers at the earliest opportunity.

The consultation document suggested three principles on which to base the standard powers:

⁸⁰ Home Office, *A national evaluation of Community Support Officers*, Home Officer Research Study 297, 2006, <http://www.homeoffice.gov.uk/rds/pdfs06/hors297.pdf>, pp xi-xii

⁸¹ Cm 6360, p84

⁸² Home Office, *Standard Powers for Community Support Offices and a Framework for the Future Development of Powers*, August 2005. The consultation paper and a summary of responses can be found at <http://www.homeoffice.gov.uk/documents/cons-cso-powers-310805/>

- All CSOs should have enforcement powers against anti-social behaviour, particularly to require a name and address
- The powers should enable them to deal with alcohol abuse in view of the seriousness of the problem throughout the country
- The powers should enable them to play a full role in neighbourhood policing teams.

Responses showed very little opposition to these principles, and over 70% of respondents agreed that standardisation was desirable, with only 12% disagreeing.⁸³ Many, including ACPO, felt the standard set should be minimal, with Chief Constables deciding what further powers should be designated locally. Many respondents from the police felt that powers that could give rise to confrontation should not be standard, in part because of the training and equipment costs that would entail, and the Government accepted this.⁸⁴

We do not agree with the 15% of replies that said that all powers should be standardised, but rather support the position that CSOs should be given a core set of standard powers that enable them to operate most effectively but that those enforcement powers that carry a greater risk of involving CSOs in potentially confrontational situations should remain discretionary. For this reason we do not, for example, propose to include powers such as the powers to use reasonable force to detain or the power to search a detained person for dangerous items that could be used to assist escape, in the standard set.

Accordingly, the Government's response document set out the powers which it intended to include in the standard set, and those which are to be excluded.⁸⁵ These are also set out in Annex A to the Bill's Explanatory Notes.⁸⁶ In addition, it proposed one additional power, to take part in truancy sweeps. This had already been announced as part of the Government's Respect Action Plan in view of CSOs' "local knowledge of the children in their area".⁸⁷ This new power is not to be included in the standard set.

The consultation document proposed including the majority of CSOs powers in the standard set. Thus all CSOs would be able to:

- require a name and address from people believed to have committed certain offences, including some road traffic offences, or to have acted in an anti-social manner
- detain a person believed to have committed certain offences or refusing to give a name and address for up to 30 minutes pending the arrival of a police officer

⁸³ Home office *Summary of responses to 'Standard Powers for Community Support Officers' and the government response*, undated, <http://www.homeoffice.gov.uk/documents/cons-cso-powers-310805/cons-resp-cso-powers?view=Binary>

⁸⁴ *Ibid*, p6

⁸⁵ Annex A and B

⁸⁶ *Police and Justice Bill Explanatory Notes*, Bill 119-EN, 25 January 2006, <http://pubs1.tso.parliament.uk/pa/cm200506/cmbills/119/en/06119x--.htm>

⁸⁷ HM Government, *Respect Action Plan*, January 2006, p 26, <http://www.homeoffice.gov.uk/documents/respect-action-plan?view=Binary>

- detain beggars who have refused to stop committing vagrancy offences
- photograph people who have been arrested, detained or given a fixed penalty notice away from a police station
- remove abandoned vehicles
- stop vehicles for testing and stop cycles where the person is believed to have cycled on the footpath
- carry out road checks, stop vehicles for testing and escort abnormal loads
- seize vehicles used to cause alarm
- direct traffic and place traffic signs
- require people drinking in a designated area to surrender alcohol
- confiscate alcohol and tobacco from children
- search for alcohol and tobacco
- seize drugs and requiring a name and address for possession of drugs
- enter licensed premises in certain circumstances
- enter and search any premises for purposes of saving life and limb or preventing damage to property
- enforce cordoned areas under the Terrorism Act 2000
- stop and search in authorised areas under the Terrorism Act 2000

The following powers would **not** be included in the standard set, although Chief Officers would have the discretion to designate these powers

- using reasonable force to prevent a detained person making off or to transfer control of a detained person
- searching a person for dangerous items or items which could be used in to assist escape
- enforcing bylaws
- removing children in contravention of curfew notices to their place of residence
- dispersing groups and taking children in designated dispersal areas home
- enforcing licensing offences, such as selling alcohol to children or to people who are drunk, by requiring names and addresses
- entering licensed premises to investigate licensing offences
- the new power of removing truants to a designated place (see clause 5, discussed below)

CSOs also currently have powers to issue penalty notices. These might be Fixed Penalty Notices, which are normally £50 or Penalty Notices for Disorder, which can be £50 or £80 depending on the seriousness and are discussed on section III.A of this Research Paper below.

In addition to the standard powers set out above, all CSOs would be able to issue penalty notices for a wide variety of offences, including:

- dog fouling,
- littering,
- graffiti/flyposting,
- cycling on the pavement,
- throwing fireworks, trespassing on the railway and throwing stones on the railway,

- certain other fireworks offences
- selling alcohol to a person under 18
- drinking alcohol in designated area, or by a person aged under 18

However the power to issue some penalty notices would still be designated at the discretion of Chief Officers. The standard list of powers would **not** include the power to issue penalty notices for:

- truancy
- destroying or damaging property
- wasting police time, or giving false report
- causing harassment, alarm or distress
- using the public network communications to cause annoyance
- drunk and disorderly behaviour or being drunk in the highway

3 The Bill

The standard set of powers is not on the face of the Bill. Clause 4 of the Bill is a regulation-making power which would permit the Secretary of State to confer by order a set of standard powers on all CSOs.

Clause 5 of the Bill contains the new power for CSOs to deal with truants. If the Chief Officer decides to designate them with this power, they will have the power that constables already have under Section 16 of the Crime and Disorder Act 1998 to remove truants from specified areas and take them either to school or to a place specified by the local authority.

4 Comment

The Association of Chief Police Officers in a press release gave the following response to this part of the Bill:⁸⁸

We must make the best use of Police Community Support Officers (PCSOs) in providing a better local service. The standardisation of powers for PCSOs will bring some clarity to the public as to what PCSOs are for. However, we need to guard against them being given powers that lead to abstraction from their major role in providing high visibility contact with the public. More powers mean more training, equipment and office time dealing with those powers, and Chief Constables must retain discretion in how best deploy them.

By contrast, the Police Federation is opposed to chief officers' discretion over these powers.⁸⁹

⁸⁸ ACPO, Bill supports more effective policing, 25 January 2006,

⁸⁹ Police Federation, *Parliamentary Briefing Paper Police and Justice Bill (2005) House of Commons: Second Reading* 20 February 2006
http://www.polfed.org/210206HouseofCommons_Second_Reading_briefing.pdf

We are disappointed that rather than using the Bill to standardise CSO powers across the country, this clause will allow different forces to designate different powers to different CSOs.

CSOs were sold as the eyes and ears of the service yet it is clear that some will have the power to use reasonable force, despite their lack of training and despite Ministerial reassurances to the contrary during the passage of the Police Reform Act (2002).

Anecdotal evidence from front-line officers also suggests that many people are confused as to the difference between “police officers” and “police community support officers”. We therefore support the Home Affairs Committee’s recommendation that the partial powers of CSOs and accredited community safety organisations should be reflected in different uniforms. We also believe uniforms should reflect the nomenclature used in the Police Reform Act i.e. Community Support Officer, not the more confusing Police Community Support Officer.

Paragraph 17 of Schedule 2 is, to all intents and purposes, the introduction of mutual assistance for CSOs (and other persons employed by a police force). We believe that this too would be hindered if CSOs in different forces had different powers.

However, the Police Federation welcomes the powers to deal with truants as being “eminently sensible”.

II Powers for the police and other authorities

A. Conditional cautions

1 Police cautions

The practice of cautioning offenders was developed by the police, and encouraged by a series of Home Office circulars from the late 1970s. Although used initially for juveniles (in respect of whom they were replaced by a statutory scheme of reprimands and final warnings in the *Crime and Disorder Act 1998*) the practice is also used for adult offenders.

Home Office guidelines have been issued from time to time to promote consistency between forces. The current guidelines make it clear that, before a caution is given:⁹⁰

- there must be sufficient evidence of the suspect’s guilt
- the suspect must have made a clear and reliable admission of the offence
- it must be in the public interest
- the views of the victim must be established
- the suspect must be aware of the significance of the caution

⁹⁰ Home Office Circular 30/2005, *Cautioning of Adult Offenders*, 14 June 2005 available at <http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/d820bbad9e5edd8680257013004d1ccf?OpenDocument>

The consequences of a caution include:

- it forms part of an offender's criminal record and may influence how they are dealt with should they come to the notice of the police again
- simple cautions for recordable offences are entered on the Police National Computer and may be made known to a prospective employer through a standard or enhanced disclosure by the Criminal Records Bureau
- the caution may be cited in court following conviction for another offence

2 Conditional cautions

The *Criminal Justice Act 2003* introduced conditional cautions as a new alternative to prosecution of adult offenders. It is based on the traditional police caution, but it does not supersede it.

In his 1999 review of criminal courts, Lord Justice Auld noted that other countries, including Scotland and Germany, had systems in which conditions could be attached to cautions, and recommended that consideration should be given to introducing such a scheme in England and Wales.⁹¹ The White Paper which was produced in response to the Auld report said that the Government saw such schemes "as having a real value in reducing offending, promoting reparation and saving court time".⁹²

Under section 22 of the *Criminal Justice Act 2003*, police constables, other investigating officers and prosecutors have the power to give offenders a conditional caution providing five requirements are fulfilled:

1. the officer has evidence that the person has committed an offence
2. the prosecutor decides that there is sufficient evidence and that a conditional caution is appropriate
3. the offender admits the offence
4. the effect of the caution is explained to the offender along with the fact that failure to comply with the conditions may result in him being prosecuted
5. the offender signs a document containing the details of the offence, an admission that he committed it, consent to the caution being issued and the conditions attached to the caution.

There is a statutory code of practice on conditional cautions.⁹³ The scheme is being piloted in six areas, and evaluations are expected in "early 2006".⁹⁴

Mr. Oaten: To ask the Secretary of State for the Home Department what progress has been made towards implementing conditional cautioning under Part 3 of the Criminal Justice Act 2003; and if he will make a statement. [32883]

⁹¹ The Right Honourable Lord Justice Auld, *A Review of the Criminal Courts of England and Wales*, September 2001

⁹² Home Office, *Justice for all*, Cm 5563, July 2002

⁹³ <http://www.cps.gov.uk/publications/others/conditionalcautioning04.htm>

⁹⁴ HC Deb 1 December 2005 c747W

Fiona Mactaggart: The Conditional Cautions scheme has been implemented in six Early Implementation Areas to test its application and adaptation from policy to local frontline delivery.

This began in one police basic command unit in each area, with the intention of growing the scheme across the wider police force area once the pathfinder phase was complete. Lancashire is the first force to use the scheme across their police force. The evaluation report from these Early Implementation Areas is due to be published in early 2006 but initial indications suggest that overall use of the scheme is positive. Victim satisfaction with the scheme is reportedly high and practitioners in the areas see benefit in rolling the scheme out more widely.

Offenders questioned as part of the evaluation have also considered the scheme a success. The strategy for national rollout of Conditional Cautions is currently being planned, taking into consideration the evidence of the Early Implementation Areas. Initial rollout across one basic command unit per criminal justice area is expected to be completed within 18 months.

Blackstone's Guide to the 2003 Act gives the following summary of the arguments for and against cautioning:⁹⁵

Cautioning has a number of real advantages over prosecution: it is very cheap and efficient, it provides a very immediate response to offending, it is not vindictive and may leave the offender feeling fairly dealt with by the criminal justice system. It avoids the uncertainty inherent in litigation. However, the practice is also subject to a number of criticisms. It is a low visibility procedure (compared with court proceedings) and therefore may be subject to abuse; because it does not involve formal adjudication there is a danger that it may be used where offending cannot be proved; police decision-makers may act as judge and jury; it may involve "net widening" by which individuals who have not committed a crime or do not deserve to be proceeded against are brought into the criminal justice system. It may be seen as an inappropriately lenient 'slap on the wrist' which fails to adequately condemn offending behaviour.

3 Proposals for change

The 2003 Carter Report on correctional services, which recommended the merger of the Prison Service and Probation Service, also made a number of recommendations for strengthening the credibility of non-custodial sentences.⁹⁶ Carter argued that "there is considerable scope for low risk, low harm adult offenders who plead guilty to be diverted from the formal court process," and went on to propose building reparation into conditional cautions:

Diversion from court is used widely in other European countries. • In Germany, between 25 and 30 per cent of offenders are given conditional dismissals as an alternative to prosecution. The decision is the responsibility of the prosecutor. The offender can be asked to pay a fine or make reparation or undertake

⁹⁵ Richard Taylor et al, *Blackstone's Guide to The Criminal Justice Act 2003*, 2004 p25

⁹⁶ Patrick Carter, *Managing Offenders Reducing Crime a New Approach*, 11 December 2003, <http://www.probation.homeoffice.gov.uk/files/pdf/52pp.pdf>

community service. They do not get a criminal record. If they fail to keep to the conditions they can be taken to court.

A similar approach should be used in England and Wales, building on the new statutory conditional cautions in the Criminal Justice Act.

- The conditional caution would be linked with financial reparation to the victim, an apology, restorative work, victim-offender mediation or community work.
- If the offender does not comply with a conditional caution they would be prosecuted.
- To ensure that costs are not excessive it would make sense to complete a short assessment on each offender given a conditional caution.

The Government's *Respect Action Plan*, published in January 2006, set out the Government's intention to extend the conditional caution scheme to include conditions requiring unpaid work.⁹⁷

ACTION: Establish new models for conditional cautioning

To tackle crime and improve community safety we need tools which tackle an individual's offending, while also giving clear signals about behaviour that is unacceptable. Conditional cautioning, which is set to be implemented across the country after a successful evaluation, can provide an effective and appropriate summary response to low-level offending, without a potentially lengthy court process.

Currently the conditions which can be attached to a conditional caution are limited to direct compensation. While these conditions have given good results for victims and offenders, and local communities have also derived indirect benefit, we want to go further. Conditional cautions could involve the offender undertaking work – to make good the damage they have caused to the local community that has suffered. In this way, offenders would be giving something back to the community to repair the harm they have caused; and more quickly than if they had gone to court. It would also send a visible message that anti-social behaviour is unacceptable and has serious repercussions for the perpetrator.

We will provide £250,000 to establish schemes in seven criminal justice areas by the end of 2006. These will test out the different models before consideration is given to expanding the schemes more widely.

4 The Bill

Section 22 (3) of the *Criminal Justice Act 2003* currently states that any conditions attached to a caution must have either or both of the following objects:

- a. facilitating the rehabilitation of the offender
- b. ensuring that he makes reparation for the offence

Clause 12 adds a third possible object, that of punishing the offender. It sets out that the possible conditions can include financial penalties or a condition that the offender attends at a specified place at specified times.

⁹⁷ HM Government, *Respect Action Plan*, 10 January 2006
http://www.respect.gov.uk/assets/docs/respect_action_plan.pdf

The potential attendance condition is limited to a total of 20 hours, and the financial penalty is limited to £500, or a quarter of the maximum fine for the offence. Both these limits could be changed by order.

5 Comment

The Magistrates Association has expressed alarm about removing cases from the judiciary in this way:⁹⁸

The Police and Justice Bill contains proposals to extend the use of conditional cautions (brought in by the CJA 2003 and currently being piloted) so that prosecutors would be able to impose conditions that were not just rehabilitative or reparative, as at present, but punitive. The possibilities are a financial penalty – which is to be determined by the prosecutor - or attending at a specified place/time for a set amount of hours, initially a maximum of 20, but with an order making power for the Secretary of State to extend.

We are extremely concerned to see these provisions on conditional cautioning in the Bill. We do not consider it in the interests of justice for prosecutors and police to be able to impose punishments as set out in this Bill without a court being involved, and are alarmed that the Secretary of State would be given power to increase these potential penalties in the future. We are talking about community penalties that a court would impose for serious offences, not extremely low level ones. There is a proposed power for the police to arrest someone without warrant and then detain them while a possible breach of a conditional caution is investigated – a draconian power in relation to something that has never been near a court.

By contrast the *Daily Mail* expressed outrage, arguing that the proposals represented a “soft” option for criminals:⁹⁹

VIOLENT criminals and drug users can avoid jail and be fined only £500 under a sentencing shake-up, it emerged last night.

The Government has quietly approved plans for yobs guilty of a shocking list of crimes to escape without even a court conviction.

Instead, thugs guilty of actual bodily harm, affray, criminal damage, possessing Class A drugs including crack and heroin and even carrying knives and other weapons in public will be offered 'conditional cautions'.

The maximum penalty will be £500 or 20 hours of 'soft' community work.

The same article went on to quote Shadow Home Secretary David Davis criticising the provisions:

‘It is outrageous that people who commit these serious and dangerous crimes will go, by and large, unpunished with no custody and no criminal record.

⁹⁸ Magistrates’ Association Press Release, 2 February 2006

⁹⁹ “How knifemen and thugs could escape with a fine of £500”, *Daily Mail*, 18 February 2006

'Sadly Labour have form for this. After all, they are the party who decided that shoplifting and drunk and disorderly merely warrants the issuing of a fixed-penalty notice.'

B. Police bail

Bail is the release by the police or the court of a person held in legal custody while awaiting trial. Police bail is governed by the *Police and Criminal Evidence Act 1984* and the *Bail Act 1976*. Where a person is arrested and taken to a police station, the custody officer has to decide whether there is sufficient evidence to justify a charge at that stage. If there is not sufficient evidence, he must decide whether there probably will be enough once further inquiries have been made. If not, then the person must be released without charge. Otherwise, the police must release him, either on bail or without bail, unless:

- the person has been charged with homicide, rape or certain other offences
- there is doubt about his name or address
- there are reasonable grounds for believing detention is necessary (for example to prevent him committing an offence, or because he will fail to appear in court).

If police bail is granted, then this must be in accordance with the *Bail Act 1976*. This provides for penalties for non-appearance in court. In the case of bail granted after the person has been charged, the custody officer can impose conditions on bail as appear necessary:¹⁰⁰

- a) to ensure that the person surrenders to custody when required to
- b) to ensure that the person does not commit an offence whilst on bail
- c) to ensure that the person does not interfere with witnesses or do anything else to obstruct the course of justice.
- d) for the person's own protection (or for their interests or welfare if they are under 17).

Reasons must be given for conditions.

These conditions cannot currently be attached to bail granted during the investigation stages of an offence, or to bail granted before a decision has been taken to charge or to refer a case to the prosecutor.¹⁰¹ The Bill will change this – see below.

The custody officer does not have the power to impose a requirement to reside in a bail hostel. Blackstone's *Police Law* notes that this is "obviously because a custody officer will not have sufficient time to make the necessary inquiries before such a condition might properly be imposed."

The custody officer may vary the conditions of bail.

¹⁰⁰ Section 3A of the *Bail Act 1976*, as inserted by the *Criminal Justice and Public Order Act 1994*, and as amended

¹⁰¹ Section 47(1A) *Police and Criminal Evidence Act 1984*

1 “Street bail”

The *Criminal Justice Act 2003* introduced a new concept of “street bail”. As originally drafted, section 30 of the *Police and Criminal Evidence Act 1984* required that once a person was under arrest, they had to be taken to a designated police station as soon as practicable. The problem was that this process could remove officers from the street at peak offending times, and a 2001 report stated that this could be for an average of three and a half hours.¹⁰² In September 2002, the Policing Bureaucracy Taskforce proposed the introduction of street bail, a “legally enforceable instruction to a suspect or offender to attend at a police station, court or any other venue where the matters disclosed could be properly resolved at a time more convenient to police, the suspect and indeed victims and witnesses.”¹⁰³

Accordingly, section 4 of the *Criminal Justice Act 2003* created a new power for constables to grant street bail. Section 30A of the *Police and Criminal Evidence Act 1984* now permits an arrested person to be released on bail any time before reaching the police station. The arrestee must be given a notice indicating the offence for which the arrest was made, the grounds on which it was made, and the duty to attend the police station. This duty may be changed or discharged but notice must be given in writing.

Section 30A states that, apart from the requirement to attend a police station, no other requirement may be imposed on the person as a condition of bail. Thus, unlike the custody officer granting police bail, under the current law the arresting officer cannot impose any additional conditions of bail.

2 The Bill

Schedule 4 of the Bill removes the ban on imposing further requirements, and replaces it with very similar provisions to those in the *Bail Act 1976* which govern police bail at a police station. Thus, like custody officers, arresting officers will be able to attach conditions to bail, but with the same restrictions that these must either be necessary to make sure those arrested surrender to custody when required, do not commit further offences, and do not interfere with witnesses, or that the conditions are necessary for the person’s own protection.¹⁰⁴ In the same way, arresting officers will not be able to require that the person resides in a bail hostel.

Under new section 30CA, a custody officer would be able to vary the conditions attached to street bail on request. Under new section 30CB, a magistrates’ court may, on request, vary the conditions of bail if the custody officer has refused to do this or failed to respond within 48 hours of the request.

The Bill also makes provisions for conditions to be attached to various types of pre-charge bail to which conditions cannot currently be attached, such as bail granted during

¹⁰² *Diary of a police officer* - PA Consulting Group, Police Research Series Paper 149 (November 2001) p vi

¹⁰³ Sir David O’Dowd, *Policing Bureaucracy Taskforce Change Proposals to Increase the Presence of Police in Communities*, 2002, <http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/MinistersReport.pdf?view=Binary>

¹⁰⁴ New section 30A (3B)

the investigation stages, or before a decision has been taken to charge or refer a case to the prosecutor.

3 Comment

The Police Federation welcomed the extension, but felt that the scrutiny of a police sergeant was still important:¹⁰⁵

While we welcome the decision to extend police bail (be it in police stations or on the street), we believe police officers should still be subject to the scrutiny of a police sergeant. This is important in order to ensure integrity and proportionality.

C. Stop and search at airports

1 General stop and search powers

The police have a range of powers to stop and search, the most frequently used of which is contained in section 1 of the *Police and Criminal Evidence Act 1984* (PACE).¹⁰⁶ This allows the police to stop and search vehicles in public places for stolen goods, offensive weapons, articles intended to be used for criminal damage, and (since July 2005) prohibited fireworks. However, the power only applies where the constable has “reasonable suspicion” that he will find such articles. It also only applies in public places, and therefore does not apply to all parts of an airport.

There are two other important powers which do not require reasonable suspicion. Under section 60 of the *Criminal Justice and Public Order Act 1994*, an officer of at least inspector rank can authorise stop and searches if he or she reasonably believes that serious violence may take place in the area, or that people are carrying offensive weapons there. These powers can last for up to 48 hours. Section 44 of the *Terrorism Act 2000* allows an officer of the rank of assistant chief constable or above to authorise stop and searches in an area if he or she reasonably believes it is expedient for the prevention of acts of terrorism.

In addition to these three main powers, there are over a dozen other powers covering a range of searches, including for drugs, firearms, alcohol at sporting events, and hunting or poaching equipment.¹⁰⁷

2 Stop and search powers at airports

Section 25 of the *Aviation Security Act 1982* gives the Secretary of State power to designate airports to be policed by the local force if he considers that this is desirable “in

¹⁰⁵ http://www.polfed.org/210206HouseofCommons_Second_Reading_briefing.pdf

¹⁰⁶ Just over 738,000 “stop and searches” were recorded in 2003/04, compared to just over 40,000 under section 60 of the *Criminal Justice and Public Order Act 1994*, and just over 29,400 under section 44 of the *Terrorism Act 2000* Home Office, *Statistics on race and the criminal justice system 2004*, <http://www.homeoffice.gov.uk/rds/pdfs05/s95race04.pdf>.

¹⁰⁷ Most of these powers are conveniently summarised in Annex E of the Home Office’s *Stop and Search Manual*, 31 March 2005 at <http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/stop-search1.html/?version=1>

the interests of the preservation of the peace and the prevention of crime". Nine airports have been so designated.¹⁰⁸ Section 27 gives the police powers to stop and search people and vehicles but only at designated airports, and only where they have reasonable suspicion that a passenger or airport employee may have stolen something from the airport. The powers are slightly different with regard to airport employees and other people. The draft Regulatory Impact Assessment on the Bill's stop and search provisions at airports gives the following summary of what the Government regards as the other gaps in the law in this area:

6. Other gaps in the powers currently available to police include an inability to stop and search members of the public and airport employees for stolen or prohibited articles in certain areas of the restricted zone and cargo areas. Police enjoy different powers in different areas of individual airports. In some cases these areas are not physically delineated. For example, within the Restricted Zone airside areas:

- Some of the airside area is a 'public place' since members of the public have access 'on payment or otherwise'. PACE powers could be used in these areas.
- Other areas of the airport are private areas which are used by private companies and not to be accessed by the public. PACE powers do not apply here.

7. In short, at present the following gaps exist in the powers that are available to police at airports:

- No powers to search staff and visitors leaving airside via staff exits (to prevent thefts);
- No powers to stop and search members of the public for stolen or prohibited articles in certain areas of the restricted zone (to prevent theft and smuggling);
- No powers to stop and search members of the public for stolen or prohibited articles in cargo areas (to prevent theft and smuggling);
- No powers in the restricted zone to determine the reasons why a person is on, at or near an airport.

In May 2002 the Government appointed Sir John Wheeler to undertake a review of security at airports with particular reference to the role of the Police Service. Extracts of his report are available on the Department for Transport Website, although not the whole report, presumably for security reasons.¹⁰⁹

The report's conclusions on police powers are summarised as follows:

13 The powers available to police officers at airports under the Aviation Security Act 1982 should be simplified. It is not clear why they should be limited to designated airports only, and it seems sensible that there should be one set of powers that applies airside. This will require primary legislation, and the DfT

¹⁰⁸ Home Office, *Draft Regulatory Impact Assessment Police and Justice Bill: Simplifying police powers of stop and search at airports*, undated http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/Draft_RIA_Police_Powers_24_1.pdf

¹⁰⁹ http://www.dft.gov.uk/stellent/groups/dft_transsec/documents/page/dft_transsec_503590.pdf

should consider whether this could be added to the handout Bill planned for the next Parliamentary session.

14 The police and the airport operator should include agreement on exit searches as part of their joint response to crime prevention at airports.

The draft Regulatory Impact Assessment explains the Government's view of the need for new powers:¹¹⁰

Lack of appropriate stop and search powers have been a serious obstacle for the police when conducting anti-smuggling operations and in detecting staff collusion and thefts. A new authority is therefore required to enable police to stop and search any person or vehicle in any area of an airport, whether designated or non-designated, where police have reasonable grounds to suspect criminal activity. This new power would reduce opportunities for criminal activity at airports and, in turn, simultaneously reduce opportunities for terrorist activity.

In a Written Ministerial Statement on 10 January 2006, the Transport Secretary, Alistair Darling, announced that he had appointed Stephen Boys Smith, a retired Home Office Director-General, to lead an "independent, wide-ranging review of policing at airports" to be completed by late spring.¹¹¹

3 The Bill

Clause 8 would give the police broad powers similar to those in section 1 of PACE. Under the provisions a constable would be able to search any person, vehicle or aircraft in an airport¹¹² for stolen or "prohibited" articles providing that he has reasonable grounds for suspicion. Articles are prohibited if they are "made or adapted for use in the course of or in connection with criminal conduct", or intended to be used for criminal conduct.

The draft Regulatory Impact Assessment makes it clear that the Government rejected other options such as designating all airports, because of the resource implications, and the fact that gaps in powers would still remain. The Government also rejected a blanket power like section 44 of the *Terrorism Act 2000*, which would allow for stops and searches without reasonable suspicion, which ACPO had requested. This is because:¹¹³

- It would be politically contentious and could be considered a disproportionate response to the actual problem.
- Industry has advised that this option would be strongly opposed by both industry and trade unions on industrial relations grounds - it would give

¹¹⁰ Home Office, *Draft Regulatory Impact Assessment Police and Justice Bill: Simplifying police powers of stop and search at airports*, undated, p3 http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/Draft_RIA_Police_Powers_24_1.pdf

¹¹¹ HC Deb 10 January 2006 c8WS

¹¹² The term used is "aerodrome", which would encompass airfields used by private flying clubs as well as airports.

¹¹³ Home Office, *Draft Regulatory Impact Assessment Police and Justice Bill: Simplifying police powers of stop and search at airports*, undated, pp5-6

police unfettered powers to target airport employees, among others, and such a wide power could easily be abused.

- Use of section 44 powers must be authorised by a senior police officer and confirmed by the Secretary of State within 48 hours. The powers cannot remain in force for longer than 28 days. To institute a blanket power analogous to Section 44 would therefore have significant bureaucracy and resource implications.

4 Comment

The Police Federation welcomes the new power:¹¹⁴

We strongly support this clause. In the committee stage of the *Violent Crime Reduction Bill (2005)* we suggested that police powers at airports should be extended and this clause will assist the police in those situations where they have reasonable grounds for suspecting that they will find stolen or prohibited articles. We believe there may be grounds for the powers in clause 8 to also include all other points of entry and exit, for instance ports.

They go on to propose additional powers to give the police the power to check passports.

D. Gathering passenger data from domestic journeys

Clause 9 of the Bill would allow the police to gather bulk passenger, crew and flight/voyage information on air and sea journeys within the UK. It would do this by amending a bill, the *Immigration, Asylum and Nationality Bill*, (the IAN Bill) which is currently going through Parliament. The draft Regulatory Impact Assessment for this provision¹¹⁵ explains that this had to be done through this Bill rather than by amending the IAN Bill because the original scope of the latter “did not encompass domestic data”—the long title of that Bill is “to make provision about immigration, asylum and nationality; and for connected purposes”.

1 Background¹¹⁶

The 2004 White Paper *One Step Ahead - a 21st century strategy to defeat organised crime*¹¹⁷ identified a need for the UK’s border agencies (the UK Immigration Service, National Ports Police and HM Revenue and Customs) to work together more effectively “to enhance border security in the wake of prevailing levels of threat to UK homeland security”.¹¹⁸ It does not propose a single border agency. A new Border Management Programme has been set up to coordinate strategy, and one of the main areas this is

¹¹⁴ http://www.polfed.org/210206HouseofCommons_Second_Reading_briefing.pdf

¹¹⁵ Home Office, *Draft Regulatory Impact Assessment, Police and Justice Bill*

¹¹⁶ More detailed background is available in Library Research Paper 05/52, the *Immigration, Asylum and Nationality Bill*, 30 June 2005, pp 33-59, from which this section draws

¹¹⁷ Cm 6167, March 2004: http://www.homeoffice.gov.uk/docs3/whitepaper_consultation_intro.html

¹¹⁸ Home Office, *Partial Regulatory Impact Assessment: Data capture and sharing powers for the Border Agencies*, June 2005, para 21: http://www.homeoffice.gov.uk/docs4/E_borders_RIA_Annex.pdf

looking at is data capture and sharing. In parallel with this is the Government's e-Borders Programme, intended to provide the border agencies with enhanced information about passengers and their movements and allow to them to communicate this information through new technology, processes and procedures: There is also a separate HM Revenue and Customs e-Frontiers Programme, under which electronic information from carriers about freight can be matched against risk profiles and other information databases before arrival.

Each of the UK's border agencies - immigration, customs and the police - has its own powers to require carriers to provide information on passengers travelling to (and in some cases from) the UK. There are varying powers to require crew and freight data.

Immigration officers have the power to require carriers to provide passenger and crew data through orders made under Schedule 2 paragraphs 27 and 27B of the *Immigration Act 1971*.

HM Revenue and Customs (HMRC) has particular powers to obtain information from carriers about all passengers arriving in the UK and about passengers travelling from the UK to non-EU countries.¹¹⁹ Powers to require information on outbound EU journeys were disapplied "as part of the Single Market provisions".¹²⁰ It also collects information on freight movements in and out of the UK.

At the moment police are able to obtain passenger information from carriers for counter-terrorism purposes.¹²¹ The information they can obtain is set out in secondary legislation, and includes name, address, date and place of birth, nationality and travel document details.¹²² It must relate to a ship or aircraft which arrives or is expected to arrive in the UK or which leaves or is expected to leave the UK. The request has to be in writing and specify the information required. Immigration officers and designated customs officers are also given these powers.

Carriers have a duty to check passengers' documentation before they travel, or face a fine, under the (amended) carriers' liability legislation.¹²³ Carriers also provide other information to the Government on a voluntary basis.

The draft Regulatory Impact Assessment gives the following explanation for why the Government wishes to change the law in this area:¹²⁴

¹¹⁹ HM Revenue and Customs, *Spring Departmental Report 2005*, Cm 6542 June 2005 p19

¹²⁰ Home Office, *Partial Regulatory Impact Assessment: Data capture and sharing powers for the Border Agencies*, June 2005, Annex B, 'Enhanced powers to enable HM Revenue and Customs to obtain information on passengers travelling from the UK to another EU country, and in respect of all international journeys in advance of arrival in the UK'

¹²¹ *Terrorism Act 2000* schedule 7

¹²² *Schedule 7 to the Terrorism Act 2000 (Information) Order 2002* SI 2002/1945

¹²³ *Immigration and Asylum Act 1999* s32, and *Carriers' Liability Regulations 2002*, SI 2002/2817

¹²⁴ Home Office, *Draft Regulatory Impact Assessment Police and Justice Bill: Data Capture*, undated, http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/Draft_RIA_Data_Capture_-_241.pdf?view=Binary

16. At present it is not possible for the Police to capture and analyse bulk data prior to travel on journeys within the UK.

- Under Schedule 7 of the Terrorism Act 2000, an examining officer (a constable, an immigration officer or a customs officer) has powers to capture passenger information from the owners or agents of certain ships and aircraft only at a port or border area and only for counter-terrorism purposes.
- Since the powers are limited to examining officers at ports, police officers in a joint border agency environment cannot directly gain access to information obtained under Schedule 7.
- In addition, Schedule 7 does not cover the acquisition of bulk data.

17. Identifying patterns in terrorist and criminal activity is key to reducing the freedom of these individuals and groups to move across our borders. We have evidence that terrorist groups often look for those access points through the border where they are less likely to be identified. Blanket data coverage will reduce the risk of this displacement effect.

18. Some limited data sharing does already take place under common law powers or through statutory gateways, for example, under the Immigration & Asylum Act 1999 and the Terrorism Act 2000. However, these are not sufficient for the joint working envisaged or for sharing bulk data.

19. The provisions proposed under the Police and Justice Bill would help plug this gap in Police powers and enable the Police and other Border Agencies to gain intelligence on journeys within the UK. This would support both general police and criminal justice functions as well as counter terrorism functions.

20. We hope it is clear from the above where the current vulnerabilities lie and how the legislative proposals will help to cover these.

2 The Bill

The provision in question, currently in clause 32 of the *Immigration, Asylum and Nationality Bill* would impose a duty on ship and aircraft owners to provide passenger, crew or service information required by a police officer of at least the rank of superintendent. The information which may be collected will be specified in secondary legislation. At present, the duty applies to ships and aircraft which are:

- (a) arriving, or expected to arrive, in the United Kingdom, or
- (b) leaving, or expected to leave, the United Kingdom.

Clause 9 of the *Police and Justice Bill* would amend the prospective section 32 of the *Immigration, Asylum and Nationality Act* to make it clear that the duty also applies to ships and aircraft which are arriving from a place in the UK, or leaving for a place in the UK.

The provisions would not apply to other forms of transport such as trains.

3 Comment

In a press release, the Liberal Democrats' policing spokesperson, Lynne Featherstone MP, expressed concerns about the provision:¹²⁵

The proposal for the police to be sent a list of every passenger on every domestic UK flight is a deeply worrying intrusion into people's private lives. It adds another building block in the construction of surveillance society

The Liberal Democrat Home Affairs spokesman, Alistair Carmichael was quoted in a press article, also expressing concern:¹²⁶

The new Liberal Democrat home affairs spokesman, Alistair Carmichael, said last night: "I am extremely concerned at the suggestion that ordinary people could be put under routine surveillance on domestic flights. Tracking cross-border movements in and out of the UK is necessary for proper immigration control. But there will have to be some pretty compelling arguments before we allow that principle to be extended to every journey inside the UK.

"It is increasingly clear that the government is building a surveillance infrastructure which is unparalleled in the free world," he said.

The same article reported concerns from the human rights and privacy pressure group, Privacy International:

Gus Hosein of the pressure group Privacy International said: "New Labour has decided that it is no longer a crime for government to amass all that they can on each and every one of us. This is a novel interpretation of 'big government'."

By contrast, a *Daily Mail* article reported criticisms from the Conservatives in response to reported comments by the Home Office minister Hazel Blears that the powers were needed because "just six per cent of the estimated 1,600 underworld gangs were under 'proactive' investigation by police forces":¹²⁷

(..) Tory spokesman Nick Herbert said it is a 'serious concern' that so many crime gangs are operating without being monitored. He blamed the Government for failing to free police from form-filling and red tape.

E. Weights and measures inspectors

The Government has organised a number of Alcohol Misuse Enforcement Campaigns to target licensing offences and reduce alcohol-related disorder. The most recent was in six weeks around Christmas 2005. Police and trading standards officers carried out over 6,000 test purchase operations, dealt with more than 30,000 offences and made over

¹²⁵ Liberal Democrat Press Release, *Police and Justice Bill a missed opportunity* – Featherstone, 25 January 2006, <http://www.libdems.org.uk/news/story.html?id=9619>

¹²⁶ "Security services and police to get UK air passenger details in advance", *Guardian*, 24 January 2006

¹²⁷ "No police watch on 1,500 crime gangs", *Daily Mail*, 26 January 2006

25,000 arrests.¹²⁸ Trading standards officers also enforce restrictions on the sale of fireworks.

The *Respect Action Plan* announced that the Government intends to “make it easier for trading standards officers to issue PNDs (Penalty Notices for Disorder) to people who sell age-restricted products, such as alcohol or fireworks, to young people.”¹²⁹

Clause 10 of the Bill will enable chief officers of police to accredit Trading Standards Officers, who will then be able to issue penalty notices, without having to rely on the police to do this for them. The draft Regulatory Impact Assessment explains the provisions:

The Bill will enable Chief Constables to designate Trading Standards Officers (TSOs) with the power to issue Penalty Notices for Disorder (PNDs). We will also take a power to specify, by Order, other non-police employees who Chief Constables might accredit as having such a power. PNDs enable the police to deal quickly and effectively with minor disorderly behaviour by issuing offenders with fixed penalties, thus removing the need to take them to court. Providing TSOs with the power to issue PNDs in their own right will free the police from having to provide an accompanying officer for test purchase operations (in which under age people are used to test whether licensed premises are complying with the law banning sales of alcohol to persons aged under 18). It will also provide greater flexibility for TSOs enabling them to undertake more test purchase operations.

The Police Federation has doubts:¹³⁰

We are concerned that there is a tendency to presume that individuals have the knowledge and skills to use police powers appropriately simply because they have been granted the right to use them.

This clause will see the extension of several police powers to weights and measures inspectors. Whilst we understand the motivation behind this is to relieve police officers of burdensome tasks, it should be noted that these individuals will not necessarily have the same training, use the same discretion or be accountable in the same way, as police officers.

Schedule 5A 1(2) outlines the list of offences that a police constable in uniform can give a penalty notice (Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001). This list of 19 offences includes, inter alia:

- "Section 12 of the Licensing Act 1872 (c 94) Being drunk in a highway, other public place or licensed premises;
- Section 91 of the Criminal Justice Act 1967 (c 80) Disorderly behaviour while drunk in a public place;
- Section 12 of this Act Consumption of alcohol in designated public place;

¹²⁸ Home Office Press Release, *Violent Crime Falls Following Blitz on Alcohol Related Disorder*, 8 February 2006, <http://press.homeoffice.gov.uk/press-releases/violent-crime-falls>

¹²⁹ *Respect Action Plan*, p 32, http://www.respect.gov.uk/assets/docs/respect_action_plan.pdf

¹³⁰ http://www.polfed.org/210206HouseofCommons_Second_Reading_briefing.pdf

Clause 10 could see powers such as these conferred upon accredited inspectors should Chief Officers choose to argue that they fall under the “duties” of a weights and measures inspector. For this reason we seek clarification as to which powers could be conferred to weights and measures inspectors in all circumstances.

III Anti-social behaviour

A. Existing provisions to deal with anti social behaviour

When Labour came to power in 1997 there were already a number of legal remedies to deal with anti-social behaviour. These included:

- Offences under the *Public Order Act 1986*, including disorderly conduct and using threatening, abusive or insulting words or behaviour.
- The offence of “causing intentional harassment, alarm or distress” by using threatening, abusive or insulting words or behaviour, and also the offence of aggravated trespass, inserted into the 1986 Act by the *Criminal Justice and Public Order Act 1994*
- The *Protection from Harassment Act 1997* which prohibited a course of conduct amounting to harassment, which if carried out could give rise to criminal and civil penalties
- Arrest for breach of the peace
- Civil injunctions
- Powers for social landlords to deal with nuisance neighbours, particularly under the *Housing Act 1996*

The Labour Government has introduced a large number of additional remedies, including the following:

1 Anti-social behaviour orders

Section 1 of the *Crime and Disorder Act 1998* introduced ASBOs and authorised local authorities and the police to apply to the magistrates' courts for them in circumstances where an individual over 10 years of age has acted "in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household" and an ASBO is necessary to protect people in that area from further antisocial acts by that individual. The acts complained of do not have to amount to criminal offences (although they may do). The ASBO may prohibit any act or behaviour and will have effect for a specified period of at least two years or indefinitely until the court makes an order discharging or varying it. Between 1st April 1999 and 30th June

2005 there have been 6,497 ASBOs issued in England and Wales. Applications for ASBOs have been refused in 59 cases.¹³¹

2 Acceptable behaviour contracts

These are not legal remedies but are voluntary agreements between perpetrators and various authorities, including the police, local authorities or schools, to try to curb anti-social behaviour. They were pioneered by Islington LBC as an alternative to legal action, and there is Home Office guidance on their use.¹³²

3 Individual support orders

These were introduced by the *Criminal Justice Act 2003*. They can be made in respect of 10-17 year olds who have been the subject of an ASBO, and impose positive obligations on them, intended to address the cause of the anti-social behaviour.

4 Crime and disorder strategies

Section 5 of the *Crime and Disorder Act 1998* placed on local authorities and the police a joint responsibility for the formulation of crime and disorder reduction strategies in each district, borough or unitary local authority area in England and Wales.

5 Local child curfew schemes

Sections 14 and 15 of the 1998 Act put in place arrangements for local authorities to introduce local child curfew schemes to deal with the problem of unsupervised children under ten on the streets late at night. Schemes may be made by local authorities after consulting the local police, but have to be confirmed by the Secretary of State before they can take effect. A police officer who has reason to believe that a child has breached a curfew notice must return the child home.

In August 2001 the power was extended, by the *Criminal Justice and Police Act 2001*, so that schemes could be made by the police as well as local authorities, and could apply to children under 16.

Although these provisions came into force in September 1998, they have not been used.¹³³ However, a rather similar scheme was introduced in the *Anti-social Behaviour Act 2003* – see below.

6 Anti-social behaviour injunctions

These allow social landlords to obtain injunctions against a wide range of perpetrators of anti-social behaviour, and are discussed in section III.F of this Research Paper below.

¹³¹ For more statistical information on ASBOs, see Library Standard Note SN/SG/3112

¹³² Home Office, *A guide to anti-social behaviour and acceptable behaviour contracts*, March 2003, <http://www.crimereduction.gov.uk/asbos9.pdf>

7 Dispersal powers

Under the *Anti-Social Behaviour Act 2003* the police can designate an area as being one where there is a significant and persistent problem of anti-social behaviour. Once the area has been designated, the police have powers to disperse groups, and take unsupervised children home between the hours of 9pm and 6pm. The Home Office estimates that dispersal powers were authorised in 809 areas in England and Wales between 1 January 2004, when the powers came into force, and 30 June 2005. In total it estimates that 14,375 people had been dispersed from the 293 areas for which data was collected.¹³⁴

8 Fixed penalty notices for disorderly behaviour

Fixed penalties have been familiar in the context of parking and some driving offences for many years.¹³⁵ They have also been used for some customs and excise infringements, and local authorities have powers to issue fixed penalty notices to those accused of littering and allowing dogs to foul public spaces.

In June 2000, the Prime Minister suggested that police should be given the power to impose on-the-spot fines to drunken louts, to deter drunken and anti-social behaviour.¹³⁶ The suggestion was not taken up. Sir John Evans of the Association of Chief Police Officers explained that the collection of cash by police was not a practical idea: forces did not have that kind of provision.¹³⁷ In September 2000, the Home Office issued a consultation paper seeking views on a proposal to introduce fixed penalty notices in dealing with disorderly behaviour.¹³⁸

The result was ss1-7 of the *Criminal Justice and Police Act 2001*. Under these provisions a constable who has reason to believe that a person aged 18 or over has committed a relevant offence may give that person a penalty notice, which can be £50 or £80 depending on the seriousness. Receiving a penalty notice does not count as getting a conviction. Recipients have 21 days to pay the penalty or to request a hearing, or the penalty will be reissued at one and a half times the original amount. Failure to pay a penalty may result in a higher fine imposed by the court or imprisonment.¹³⁹ 140,785 penalty notices for disorder were issued in England and Wales in 2005.¹⁴⁰

The Government has announced in the Respect Action Plan that it intends to increase the £80 fine to £100.¹⁴¹ Further information on penalty notices is available at <http://www.homeoffice.gov.uk/anti-social-behaviour/penalties/penalty-notices/> and <http://www.together.gov.uk/article.asp?aid=1178>

¹³³ HC Deb 21 February 2005 c446W and confirmed with Home Office, 23 February 2006

¹³⁴ Source: Use of dispersal powers, Home Office Research Development Statistics, June 2005 <http://www.together.gov.uk/article.asp?c=185&aid=3463>

¹³⁵ They were introduced by the *Transport Act 1982*, which came into force in 1986.

¹³⁶ "Blair: fine louts on the spot", 30 June 2000, BBC News, http://news.bbc.co.uk/1/hi/uk_politics/812935.stm

¹³⁷ "Blair backs down on fining 'louts'", 3 July 2000, BBC News, http://news.bbc.co.uk/1/hi/uk_politics/816949.stm

¹³⁸ Home Office, *Reducing public disorder The role of fixed penalties*, 26 September 2000

¹³⁹ See <http://www.homeoffice.gov.uk/anti-social-behaviour/penalties/penalty-notices/>

¹⁴⁰ Provisional figures. Source: RDS - Office for Criminal Justice Reform

¹⁴¹ p32

B. Other government strategies to deal with anti-social behaviour

In addition to legislating to deal with the problems, the Government also launched the *Together* campaign in 2003 to support local agencies and residents to tackle anti-social behaviour in their communities. A website was set up to give information on the tools available.¹⁴² In September 2005, the Government established a cross-departmental Respect Task Force headed by Louise Casey, who had been the director of Home Office's Anti-Social Behaviour Unit. The task force was given direct responsibility for delivering the Respect Agenda, and its work led to the publication of the Prime Minister's *Respect Action Plan* in January 2006, and another website.¹⁴³

C. Crime and Disorder Reduction Partnerships

1 Background

As was outlined in section I of this Research Paper, CDRPs – also known as Community Safety Partnerships - are statutory partnerships in which the police, local authorities, fire and police authorities, and health bodies work with other local agencies to develop strategies to deal with crime and disorder.¹⁴⁴ These CDRPs are organised on local government boundaries and are sited at unitary authority level in single tier authorities and district level in two-tier authorities in England.

The 2004 White Paper promised that the Government would conduct a review of CDRPs:¹⁴⁵

ii. There are now 354 Crime and Disorder Reduction Partnerships in England and 22 Community Safety Partnerships in Wales. Some work well, implementing robust multi-agency strategies shaped by the needs and concerns of local people, contributing to sustained reductions in crime and tangible improvements in local quality of life. However, some CDRPs are demonstrably less effective than others. For example, partnerships sometimes struggle to maintain a full contribution from key agencies. Lack of clarity about roles and responsibilities and blurred lines of accountability can lead to some agencies abrogating their responsibility for crime reduction. Furthermore, under present arrangements, CDRPs are neither fully visible nor properly accountable to the communities they serve, nor are they firmly embedded in the local democratic framework. These issues lie at the heart of the Government's reform programme.

iii. The Government's overriding aim is to make CDRPs the most effective possible vehicle for tackling crime, anti-social behaviour and substance misuse in

¹⁴² <http://www.together.gov.uk/home.asp>

¹⁴³ <http://www.respect.gov.uk>

¹⁴⁴ Section 5(1)

¹⁴⁵ Cm6360, p158

their communities. In support of this, we intend to review formally the partnership provisions of the Crime and Disorder Act 1998 (as amended by the Police Reform Act 2002). The review will consider which aspects of existing legislation are most effective and which have been less successful and why. It will recommend legislative and other changes to enable local agencies to work together more effectively with local people to combat crime, anti-social behaviour and drug misuse in their communities.

The results of the review were published in January 2006.¹⁴⁶ This report recommended the following:

- Splitting the strategic and the operational decision making responsibilities of CDRPs, so that the CDRPs at district level would be able to concentrate on delivery;
- Encouraging mergers of CDRPs, as “too often, smaller CDRPs lack the critical mass and infrastructure they need”.¹⁴⁷ The Government has produced guidance on such mergers.¹⁴⁸ Increasing the number of merged CDRPs would facilitate “greater coterminosity across agency boundaries”, particularly with BCUs;
- Changing the requirement for CDRPs to produce three yearly audits of crime and disorder in their area, and instead asking them to undertake regular strategic assessments, on at least a six monthly basis, to produce rolling community safety plans;
- Giving agencies in the partnerships a duty rather than a power to share depersonalised information;
- Requiring CDRPs to produce regular reports to their communities;
- Dispensing with the requirement to produce an annual report for the Home Secretary;
- Ensuring that local authority cabinet members with the community safety portfolio should sit on the Local Strategic Partnership with strategic responsibility for the CDRPs in the area;
- Extending the powers of local authority Overview and Scrutiny Committees to encompass the work of CDRPs/CSPs.

The report went on to emphasise the importance of the overview and scrutiny arrangements in the context of police restructuring:¹⁴⁹

¹⁴⁶ Home Office, *Review of the partnership provisions of the Crime and Disorder Act 1998 – Report of findings*, January 2006, <http://www.crimereduction.gov.uk/partnerships60.htm>

¹⁴⁷ Paragraph 2.10

¹⁴⁸ Home Office, *Merging Crime & Disorder Reduction Partnership areas*, 2004, <http://www.crimereduction.gov.uk/partnerships66.htm>

¹⁴⁹ p21

4.18 The police reform agenda will mean that the creation of larger forces will require police authorities to take a more strategic view when discharging their functions. Concerns have been expressed that this may lead to strategic forces and authorities being remote from communities at a neighbourhood and district level. We believe that the measures set out above for improving democratic accountability of all CDRP partners, including BCU Commanders, together with the introduction of neighbourhood policing across the country and the 'Community Call for Action' (set out in the Respect Action Plan) will allay such concerns. BCU Commanders, alongside other responsible authorities, would be answerable to the Overview and Scrutiny Committee for their contribution to the delivery of local community safety priorities as detailed above. The police authority would be co-opted to sit on the committee to ensure that they play a role in ensuring local policing priorities are reflected at a more strategic level and vice-versa.

2 The Bill

Schedule 6 of the Bill amends the *Crime and Disorder Act 1998* to allow the Secretary of State (or the National Assembly for Wales) to change the list of "responsible authorities" on CDRPs by order. It also extends the scope of the strategies which CDRPs must formulate, which currently covers reduction in crime and disorder and combating the misuse of drugs, to include anti-social behaviour, behaviour which otherwise adversely affects the local environment, and combating alcohol and other substances as well as drugs.

Paragraph 5 of Schedule 6 places "relevant authorities" – the police, local authorities, health authorities, probation boards and registered social landlords - under a duty to share depersonalised data for the purposes of reducing crime and disorder.

Clause 15 would insert a new section 21A into the *Local Government Act 2000* to extend the remit of local authority overview and scrutiny committees to ensure that they review and scrutinise or make reports or recommendations on CDRPs. It also introduces the "community call for action", which is discussed below.

3 Comment

The Local Government Association has welcomed these provisions:

The Police and Justice Bill provides welcome measures to help ensure local policing reflects the needs of residents and is accountable to the communities it serves. This is especially important given the creation of strategic police authorities.

The Bill recognises the crucial role councils play in Crime and Disorder Partnerships (CDRPs) and in reducing crime and anti-social behaviour. The LGA has argued that CDRPs should be the focal point for local crime reduction and community safety activity, and these measures enhance their role.

D. “Community call for Action”

1 Background

The 2004 White Paper proposed that where there was a particular problem with crime or anti-social behaviour which was not being adequately dealt with there should be a trigger for local action:¹⁵⁰

3.68 Communities rely on the police and their partners to use the powers that only they have available to them to keep their communities safe. They need to be given a guarantee that when faced with a problem that requires the use of those powers, action will be taken on their behalf.

3.69 The Government does not want to see local communities being left to fend for themselves because they have not been able to get a response from local agencies. Neither do we want the police or local authorities to be left to deal with recurring problems because they cannot get one or more of their partners to take action to resolve them. **The Government therefore proposes introducing a specific mechanism to trigger such action.**

3.70 The Government considers that one option could be to strengthen the role of local councillors in this respect by giving them the right to trigger action on the part of police and other relevant agencies when they are presented with acute or persistent problems of crime or anti-social behaviour to which local communities have been unable to get an effective response. This would not be about individual complaints – nor could it be triggered by individuals – but rather by community groups, after persistent efforts to secure action have come to nothing. This power would give elected representatives greater ability to obtain a solution for their communities.

3.71 This new power would give communities a greater guarantee that they will be properly protected. But we recognise that it will be vital to put in place sufficient safeguards to prevent malicious or vexatious use of the power or its misuse by groups with extremist views. Councillors would have to demonstrate that the case met certain conditions before they were able to invoke the trigger power. Agencies would be able to decline requests under certain circumstances if, for example, they were frivolous, vexatious or would involve a disproportionate burden on agencies. We are proposing that this should be an avenue of last resort rather than a mainstream way of doing business.

The *Respect Action Plan* gave further details of how the “call to action” would work:¹⁵¹

In the police reform White Paper, *Building Communities, Beating Crime*, we committed to introducing a power that will give local communities a formal way to request and ensure that action is taken by the police, local authorities and others in response to persistent anti-social behaviour or community safety problems. Or if that action is not taken – they will know why not publicly.

¹⁵⁰ Cm 6360, pp 70-1

¹⁵¹ http://www.respect.gov.uk/assets/docs/respect_action_plan.pdf, p28

We will place a duty on district level ward councillors to consider issues, and respond within a prescribed timescale. The majority of problems should be resolved at this stage. However, for particularly difficult problems the councillor will have a new power to refer them to the scrutiny committee of the local authority. The committee would have a duty to consider any referred issue and respond within a prescribed timescale. We will also place a duty on responsible authorities, co-operating bodies and registered social landlords to respond to the committee's report again within a prescribed timescale. At every stage local agencies will have to make public the action they will take or the reason they will not take action.

2 The Bill

As noted above, clause 15 would insert a new section 21A into the *Local Government Act 2000*. The Explanatory Notes set out how this would provide for the "call to action":

168. *Subsection (4)* puts ward councillors under a duty to respond to a call for action from anybody living or working in the area which they represent, on a crime and disorder (including anti-social behaviour and behaviour adversely affecting the environment) or substance misuse matter in that area. The ward councillor's response must indicate what (if any) action he or she proposes to take to resolve the matter. The ward councillor may refer any such matter to the scrutiny committee of the council for consideration. The ward councillor will do this when reasonable steps to resolve the problem through more informal means have been taken but have failed. If the councillor does not take the matter forward, then the person raising the matter may refer it to the local authority executive for consideration.

169. *Subsection (5)* requires the council executive to consider any matter referred to them, and enables them to refer it to the overview and scrutiny committee.

170. *Subsection (6)* requires the scrutiny committee to consider a crime and disorder matter referred to it by a ward councillor and/or the council executive, and enables the committee to make a report or recommendations on it to the council executive or local authority.

171. *Subsection (7)* requires the overview and scrutiny committee to send a copy of any report or recommendations made under *subsection (6)* to such of the responsible authorities and co-operating bodies of the CSP as it considers appropriate.

172. *Subsection (8)* puts the responsible authorities and co-operating bodies which receive a copy of the report or recommendations under a duty to consider the report or recommendations and respond to the committee indicating what (if any) action they will take. It requires them to have regard to the report or recommendations.

3 Responses

The introduction of the trigger power was welcomed by the Home Affairs Committee in its 2005 report on anti-social behaviour:¹⁵²

383. We welcome the actions of the Government in improving the redress of individuals and communities whose concerns around ASB are not being addressed. In particular, we welcome the proposals in the White Paper on police reform for trigger powers to force local agencies to respond to ASB. We recommend that, if these proposals are adopted, the Government ensures that the use of the trigger powers is closely monitored and used to feed into the evidence base about the quality of local responses to ASB.

According to the Regulatory Impact Assessment, responses to this proposal in the White Paper were mixed, with the Association of Chief Police Officers expressing particular concerns. However, the Government argues that it has taken these concerns on board.¹⁵³

3.3 The response to the proposal was mixed although the police had particular concerns. Generally, the police respondents were concerned that the mechanism should not result in the adverse skewing of police activity or provide a resort for those who can shout the loudest. The APA agreed with the proposal that ward councillors should be the way to initiate the trigger. They were clear that the mechanism should result in action being taken by other partners and not simply the police. The APA favoured a moderation of the operation of the mechanism by a joint scrutiny body of local and police authority representatives.

3.4 The LGA felt that there may be some value in the concept of such a mechanism, but that the practicalities needed careful consideration if it was not in practice to undermine partnership working.

3.5 ACPO had serious concerns over the proposals, especially the possible infringement on the operational responsibility of the police service.

3.6 The Government has considered the responses carefully and taken the comments on board in developing the proposals. The Home Office has worked closely with key stakeholders, including ACPO, the APA and the LGA as the policy has developed. Safeguards have been built into the process in response to concerns raised. There are basically three filters in the process.

The ward councillor can reject the call for action if he or she considers that the request is not a valid one of community concern, and the scrutiny committee can take the same decision, after hearing evidence from community safety partners. At the very end of the process, community safety partners can decide not to take action if it's not in the public interest to do so. We are also proposing in option 3 a duty on the scrutiny committee to co-opt a police authority member, or a member of another responsible authority as required, when considering community safety issues referred in this way. We are also proposing that the duty at the end of the process should not for operations to be directed by the scrutiny committee, but

¹⁵² Home Affairs Committee, *Anti-social Behaviour*

¹⁵³ Home Office, *The "Community Call for Action": Regulatory Impact Assessment*, 2006, http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/2006-01-17-Community_Call_f1.pdf?view=Binary

rather for the partners to respond to their recommendations. This is in line with the view held by our policing stakeholders that a scrutiny committee must not be able to direct the operational action that the police must take, but rather to recommend whether further action should be taken to address the problem.

The ACPO press release on the Bill suggested optimism that effective neighbourhood policing would mean that these powers would seldom have to be used:¹⁵⁴

"Neighbourhood policing is about giving greater access to the public over local policing decisions, and measures announced previously in the Government's Respect Action Plan should allow a more consistent approach if the requirement for all partners to be more responsive to the public is met. Once neighbourhood policing is implemented, and if local authorities and the police are working well together, we hope that the public will not need recourse to the proposed scrutiny committees. Evidence from areas where neighbourhood policing is already embedded in local communities suggest that police are already meeting their needs and expectations.

E. Parenting orders and contracts

1 Parenting orders

Parenting orders were introduced by s8 of the *Crime and Disorder Act 1998*. They can be imposed in any court proceedings where a child safety order or ASBO has been made, or where the child has been convicted of an offence, or where a person has been convicted of truancy-related offences. The *Anti-Social Behaviour Act 2003* provided for "free-standing" parenting orders, which the court can give if it is satisfied that the child has engaged in criminal or anti-social behaviour. Under the *Criminal Justice Act 2003* orders can also be made where parents are not cooperating with Youth Offender Panels. Failure to comply with a parenting order can result in criminal proceedings for breach.

The *Anti-Social Behaviour Act 2003* gave local education authorities (LEAs) the power to apply for parenting orders where a pupil has been excluded.

The parenting order can consist of two elements. The first imposes a requirement on the parent or guardian to attend counselling or guidance sessions where they will receive help and support in dealing with their child. These can be residential. The second requires the parent or guardian to comply with certain requirements designed to control the child's behaviour.

2 Parenting Contracts

With effect from February 2004, the *Anti-Social Behaviour Act 2003* gave certain agencies the power to enter into Parenting Contracts, which have much in common with the non-statutory Acceptable Behaviour Contracts. Under section 19 schools and local LEAs can enter into Parenting Contracts with the parents of a child who has truanted or

¹⁵⁴ ACPO Press Release, *Bill provides support for more effective policing*, 25 January 2006, [http://www.acpo.police.uk/pressrelease.asp?PR_GUID={19FA2C68-1F01-4CAD-B42C-7038C8FDB97C}](http://www.acpo.police.uk/pressrelease.asp?PR_GUID={19FA2C68-1F01-4CAD-B42C-7038C8FDB97C)

been excluded from school. Under section 25, Youth Offending Teams (YOTs) can enter into parenting contracts with the parents of a child who has engaged in or is likely to engage in criminal conduct or anti-social behaviour. A YOT is a multidisciplinary team, typically including social workers, education welfare officers, police, probation officers and health workers, overseen by the Youth Justice Board.

The contract contains a statement by the parents agreeing to comply with the requirements for the period specified and a statement by the YOT or the Local Education Authority agreeing to provide the necessary support to the parent to comply with the requirements.

3 Proposals for change

The Prime Minister, in a speech in September 2005, proposed that parenting contracts and parenting orders should be used more widely, and that housing officers and schools should have the power to issue the orders:¹⁵⁵

"A parenting order can make clear to parents their responsibility to ensure that their child attends school, that the child takes part in literacy or numeracy clubs or that they attend programmes dealing with problems such as anger management or alcohol misuse.

"Parenting orders can also stop children visiting areas such as shopping centres and ensure a child is at home being supervised at night."

The new powers will apply to children at a much earlier stage, he said, not just when they have committed a criminal offence but when they are about to get involved in anti-social behaviour.

The Respect Action Plan set out the plans in more detail:

ACTION: Legislate to expand the use of parenting orders.

Most parents accept help when offered or will take it when they have good information. But where parents are not willing to engage, we will expand the use of parenting contracts and orders to secure their engagement.

Parenting contracts are voluntary written agreements that are used by a range of agencies to gain the co-operation of parents in relation to the supervision of their child.

Parenting orders are court orders and are currently available to local education authorities and youth offending teams. The courts also have powers in certain circumstances to impose parenting orders. They are used to gain compliance from parents and will often contain specific requirements to help curb the anti-social behaviour of children in their care or guardianship and to help them become better parents.

¹⁵⁵ "PM reveals plans to help improve parenting", Downing Street Press Release 2 September 2005, <http://www.number-10.gov.uk/output/Page8122.asp>

We have outlined our intention to extend parenting orders in the following ways:

- A new trigger of 'serious misbehaviour' will be added to the existing trigger of exclusion from school, so that a parenting order can be made before a child is excluded.
- Schools will also be able to seek parenting orders.
- Local authorities will be given new powers to extend the range of agencies that can enter into parenting contracts and orders where anti-social behaviour occurs in the community.

This may include community safety officers and housing officers.

The Education White Paper published in October 2005 had stated the Government would legislate to enable school governors to make use of these:¹⁵⁶

We will legislate to extend the scope of parenting orders and parenting contracts in particular, so that governing bodies can use them to make parents take responsibility for their children's behaviour at school.

This provision is not included in this Bill.

4 The Bill

Clauses 16 and 17 contain the new provision. New sections 25A and 25B would allow local authorities and registered social landlords to apply for parenting contracts and new sections 26A and 26B would allow them to apply for parenting orders.

Clause 18 would allow the Secretary of State to make an order enabling a local authority to contract out the functions of entering into parenting contracts and applying for parenting orders.

5 Comment

An article in *Inside Housing* cites the director of an anti-social behaviour consultancy as warning that that landlords would have to use the powers carefully, as "very often the parent-child relationship is a complicated one, particularly where anti-social behaviour is involved".¹⁵⁷ The National Housing Federation was similarly cautious:¹⁵⁸

Housing associations work closely with the police and social services to tackle the effects and causes of anti-social behaviour. However, we believe that the use of parenting orders should be led by experts in the field. Parenting orders should be sought in the most appropriate circumstances, both parents and children should be helped to get the maximum benefit from counseling and guidance

¹⁵⁶ *Higher Standards, Better Schools for All*, Cm 6677, October 2005, <http://www.dfes.gov.uk/publications/schoolswhitepaper/docs/Higher%20Standards,%20Better%20Schools%20For%20All.doc>

¹⁵⁷ "Landlords in line to enforce good parenting", *Inside Housing*, 27 January 2006

¹⁵⁸ National Housing Federation, briefing on *Anti-social Behaviour and the Respect Agenda Westminster Hall*, Thursday 19 January 2006

services, which in turn must be properly monitored. Housing associations would prefer to work in partnership with professionals, who are properly trained and resourced to do this.

F. Injunctions (by Wendy Wilson, Social Policy Section)

1 Anti-social behaviour injunctions: background

An injunction is a court order that prohibits a particular activity or requires someone to take action, e.g. to avoid causing a nuisance. Social landlords¹⁵⁹ have successfully sought injunctions against tenants in an attempt to tackle vandalism, violence, noise, harassment, threatening and unneighbourly behaviour on their estates. It is the Government's stated aim that practitioners should use injunctive action to protect communities as a means of stopping anti-social behaviour swiftly and precluding the need, where possible, for further action, including the use of eviction in the social rented sector.¹⁶⁰

Normally the ability to seek an injunction would be limited to the person(s) who actually suffered from the nuisance; however, landlords may apply for an injunction where it can be shown that the tenant in question is in breach of a tenancy condition not to indulge in particular sorts of behaviour, provided tenancy agreements are clearly and unambiguously drafted. Under the *1996 Housing Act* local authorities were given the power to apply for such orders against anyone who had used or threatened violence against someone else going about their lawful business in the locality of the local authority housing stock.

An injunction may be perpetual, i.e. a final order, or interlocutory, which is an interim order pending the final outcome of the matter. An interlocutory order can, in an emergency, be obtained without the defendant being given notice of the proceedings (*ex parte*). This has the effect of "freezing" the situation for a few days until an application for a further interlocutory injunction is made. With an interlocutory order if the nuisance ceases no further action is taken; if it continues a perpetual injunction must be sought. Failure to comply with an injunction is contempt of court which is punishable by fine and/or imprisonment.

The *1996 Housing Act* significantly strengthened the powers of local housing authorities to obtain injunctions against the perpetrators of anti-social behaviour, including allowing a power of arrest to be attached to injunctions where there was actual or threatened violence.¹⁶¹ Section 13 of the *Anti-social Behaviour Act 2003* repealed sections 152 and 153 of the *1996 Act* and replaced them with wider provisions allowing certain social landlords to apply for injunctions to prohibit anti-social behaviour that affects the management of their housing stock.

The Home Office's draft *Partial Regulatory Impact Assessment* on injunctions states that a snapshot review carried out by the Home Office, Office of the Deputy Prime Minister

¹⁵⁹ This includes local authorities and registered social landlords (RSLs, also referred to as housing associations)

¹⁶⁰ Home Office, draft *Partial Regulatory Impact Assessment*: http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/060111-RIA_track_changes_co1.pdf?view=Binary

¹⁶¹ Sections 152-158

and the Housing Corporation concluded that they are an effective tool for tackling anti-social behaviour and are widely used by practitioners. A substantial overhaul of injunctions was found not to be necessary but the review concluded that certain legislative adjustments could improve the effectiveness of this type of remedy.

In regard to section 153A of the 1996 Act, the 2003 Act specifically sought to ensure that housing injunctions could be used to protect a wide range of people in a wide range of circumstances. The test that needed to be satisfied in order to obtain an injunction was altered from a requirement that conduct that was 'likely to cause nuisance or annoyance' to conduct which was 'capable of causing nuisance or annoyance.' The purpose of this change was 'to obviate the need to identify a particular individual who would be affected by such conduct and so remove the need to either require a complaint from a specific individual or more importantly to identify such an individual.'¹⁶² Where no complainant is prepared to come forward to give evidence the court can take a view as to whether the conduct would have been capable of causing nuisance or annoyance to an individual within the classes of person described in section 153A(4) namely:

- (a) a person with the right (of whatever description) to reside in or occupy housing accommodation owned by the relevant landlord;
- (b) a person with a right (of whatever description) to reside in or occupy other housing accommodation in the neighbourhood of housing accommodation mentioned in paragraph (a);
- (c) a person engaged in lawful activity in or in the neighbourhood of housing accommodation mentioned in paragraph (a);
- (d) a person employed (whether or not by the relevant landlord) in connection with the exercise of the relevant landlord's housing management functions.

In the January 2006 *Respect Action Plan* the Government identified a need to further modify the law governing these injunctions in order to protect residents:

The courts have sometimes interpreted the legislation more narrowly than was intended and have been reluctant to make injunctions to protect unnamed individuals and the wider community. We need to ensure that witnesses and victims are given the maximum protection so that they come forward.

We will therefore legislate to ensure that it is clear that ASBIs can be used to protect whole communities and also protect witnesses from being named in applications.¹⁶³

The Home Office's draft *Partial Regulatory Impact Assessment* on the proposed changes to injunctions in the Bill provides more information on the rationale for the amendments to section 153A:

We have been informed by anti social behaviour practitioners that the courts are giving a very narrow interpretation to the term "a person" in 153A(4). On occasions this has resulted in the courts requiring individuals to be named on the face of the injunction.

¹⁶² Home Office, draft *Partial Regulatory Impact Assessment*

¹⁶³ Chapter 7, p33

This was not the intention of Parliament when these injunctions were promulgated. These injunctions were intended to be able to offer protection to the community as a whole and to individuals who did not want to be named on the face of an injunction in case it was rightly or wrongly construed that they made the complaints that led to the injunction being issued and therefore putting them at risk of reprisals.

We wish to correct any misunderstanding on the part of the courts that the term “a person” in the list of categories in s153A(4) (above) should be interpreted as meaning a community as a whole including those that do not want to be named on the face of the injunction.¹⁶⁴

The provisions of clause 19 are aimed at rectifying these deficiencies.

2 The Bill

Clause 19 of the Bill will re-enact section 153A of the *1996 Housing Act*, which extended the power to apply for injunctions to prohibit anti-social behaviour to registered social landlords and Housing Action Trusts and which allowed social landlords to apply for a general anti-social behaviour injunction against anyone, irrespective of whether they are a tenant, with modifications. The proposed modifications include:

- A new subsection (4) to make it clear that the conduct prohibited by an anti-social behaviour injunction need not be described by reference to a particular named individual. It will be possible to describe the prohibited conduct by reference to ‘persons generally, to persons of a specified description or to specified persons. Or it may contain no reference to persons at all.’¹⁶⁵
- A new definition of anti-social conduct in subsection (1) will make it clear that the conduct prohibited by an ASBI need not be conduct that would cause or be capable of causing nuisance or annoyance to a particular named individual.

The purpose of clause 19 is:

To ensure that judges fully understand that these injunctions were created with the intention of providing protection to victims who do not wish to be named on the face of an injunction for fear for reprisal and where necessary to protect whole communities that may have also been directly or indirectly affected by the behaviour of perpetrators.¹⁶⁶

The Housing Corporation supports the amendment of section 153A¹⁶⁷ and at the time of writing no objections from local authorities’ representative organisations have been reported in the housing press. The amendments are not viewed as substantive and the

¹⁶⁴ Home Office, draft *Partial Regulatory Impact Assessment*

¹⁶⁵ Bill 119-EN para 221

¹⁶⁶ Home Office, draft *Partial Regulatory Impact Assessment*

¹⁶⁷ *ibid*

draft Partial Regulatory Impact Assessment states that no additional financial costs are foreseen for the agencies that execute these injunctions.¹⁶⁸

3 Injunctions in local authority proceedings: background

Local authorities may also rely on their general power to institute proceedings leading to an injunction under section 222 of the *Local Government Act 1972*. This enables an authority, where it considers it expedient to promote or protect the interests of inhabitants of its area, to prosecute, defend or appear in legal proceedings. Section 222 of the 1972 Act was amended by section 91 of the *Anti-social Behaviour Act 2003* to allow a local authority to request a power of arrest to be attached to any provision of an injunction obtained under section 222 where the conduct in question consists of, or includes, the use of violence or where there is a significant risk of harm. In the *Respect Action Plan* the Government stated that these injunctions 'have been successfully used to break up major drug activity and the disorder associated with it.'¹⁶⁹ However, a problem identified with section 222 is that it makes no provision for what happens when a person is arrested:

Currently, when these injunctions are breached, there can be a delay before a court hearing. We will legislate so that those suspected of breaching an injunction can be brought before the courts within 24 hours of arrest. This will ensure swift action to bring perpetrators to justice and a person suspected of a breach can be held in custody until the hearing if necessary.¹⁷⁰

Clause 20 is designed to achieve this aim.

4 The Bill

Clause 20 will replace section 91 of the 2003 Act with a new provision. The power to attach a power of arrest to a section 222 injunction will remain unchanged but clause 20 and Schedule 7 to the Bill will add a new provision concerning what happens thereafter.

Where a power of arrest is attached to an injunction, if the person subject to the injunction is suspected of breaching it s/he may be arrested without warrant (subsection (4)). The arresting officer will have to inform the local authority forthwith (subsection (5)). The person arrested will have to be brought before the court within 24 hours (subsection (6)). If not dealt with immediately the court will have to remand him/her on bail or in custody. Paragraph 4(1) of Schedule 7 provides that a person may not be remanded in custody or on bail for a period of more than eight days at a time, except with the consent of all parties in a case where the person arrested is remanded on bail or where the case is adjourned to allow for a medical examination.

The purpose of the amendment is explained in the draft *Partial Regulatory Impact Assessment*:

¹⁶⁸ *ibid*

¹⁶⁹ *ibid*

¹⁷⁰ *ibid*

To do nothing would mean that injunctions issued pursuant to s222 of the Local Government Act 1972, may be considered not be as effective as injunctions issued pursuant to s153 of the Housing Act 1996. This may therefore result in practitioners not having as much confidence in what is a potentially a very effective tool.

Naturally communities want to know that these measures have 'teeth', and that a suspected breach will result in immediate action. Where an arrest is made and the subject is not brought before the courts as soon as possible, this could give rise to a sense that the power of arrest is inadequate as a result of failure to ensure breaches are dealt with quickly and visibly.¹⁷¹

The draft Partial Regulatory Impact Assessment states that the amendments to section 222 are not expected to result in any significant additional costs for the affected agencies.¹⁷²

IV Criminal Justice Inspectorates

Part 4 of the Bill would establish a new overarching inspectorate for the criminal justice system, Her Majesty's Chief Inspector for Justice, Community Safety and Custody, to replace five existing inspectorates:

- 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
- Her Majesty's Inspectorate of Court Administration.

This is part of a wider rationalisation of public sector inspectorates announced by the Chancellor in the 2005 Budget.

A. Background

In 2003, the Prime Minister's Office for Public Sector Reform produced a report, *Inspecting for Improvement*, which noted the increase in the costs of public sector inspection, from to £250 million in 1997 to over £550 million in 2002/03, and recommended that the Government should create and oversee policy for inspection through a Cabinet sub-committee.¹⁷³ A policy paper was published¹⁷⁴, also in July 2003, and work continued, with oversight transferring to the Better Regulation Executive at the Cabinet Office in 2005.¹⁷⁵ At the same time, the Government has been rationalising the

¹⁷¹ *ibid*

¹⁷² *ibid*

¹⁷³ OPSR, *Inspecting for Improvement, Developing a customer focused approach*, July 2003, <http://www.cabinetoffice.gov.uk/opsr/documents/pdf/inspecting.pdf>

¹⁷⁴ OPSR, *The Government's Policy on Inspection of Public Services*, July 2003, http://www.cabinetoffice.gov.uk/regulation/documents/public_services_inspection/pdf/policy.pdf

¹⁷⁵ http://www.cabinetoffice.gov.uk/regulation/public_services_inspection/index.asp

inspection of businesses following the Hampton review of regulatory enforcement.¹⁷⁶ Pressure for reform has also resulted from the Gershon Efficiency Review which reported in 2005 that Departments had already identified significant efficiencies in regulation activities, through “reductions in posts within departmental headquarters (such as in HO, DfES and DH) as well as savings from the rationalisation of delivery functions and inspection activities”.¹⁷⁷

In the March 2005 Budget, the Chancellor, Gordon Brown, announced that, in addition to reducing the number of inspection bodies covering business from 35 to nine, the public sector inspectorates would also be reduced.¹⁷⁸

We are today bringing forward proposals for a reduction in public sector inspectorates from 11 to four, with single inspectorates for criminal justice, for education and children's services, for social care and health, and for local services.

B. The existing inspectorates

Her Majesty's Chief Inspector of Prisons has a statutory remit to inspect prisons in England and Wales and report to the Secretary of State on them, and in particular “on the treatment of prisoners and conditions of prisons”.¹⁷⁹ The Secretary of State may refer specific matters connected with prisons and prisoners to the Chief Inspector and direct him to report on them. The Inspectorate also has a remit to inspect immigration removal centres, including those in Scotland.¹⁸⁰

Her Majesty's Inspectors of Constabulary must inspect and report to the Secretary of State on the efficiency and effectiveness of every police force, and may also carry out such other duties for the purpose of furthering police efficiency and effectiveness as the Secretary of State may direct.¹⁸¹ They may also inspect and report on police authorities' compliance with the “best value” requirements of the *Local Government Act 1999*.¹⁸² In addition, HMIC “provides advice and support to the Home Secretary, police authorities and forces and plays a role in the development of future leaders”.¹⁸³

Her Majesty's Chief Inspector of the Crown Prosecution Service inspects the operation of the Crown Prosecution Service, and reports to the Attorney General.¹⁸⁴ It has a stated purpose to “promote continuous improvement in the efficiency, effectiveness and fairness of the prosecution services within a joined-up criminal justice

¹⁷⁶ Philip Hampton, *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury, March 2005, <http://www.hm-treasury.gov.uk/media/A63/EF/bud05hamptonv1.pdf>

¹⁷⁷ Sir Philip Gershon, *Releasing resources to the front line Independent Review of Public Sector Efficiency*, July 2004, paragraph 3.15
http://www.hm-treasury.gov.uk/media/B2C/11/efficiency_review120704.pdf

¹⁷⁸ HC Deb 16 March 2005 c262

¹⁷⁹ Section 5A, *Prison Act 1952*, as amended

¹⁸⁰ Section 147, *Asylum Act 1999*

¹⁸¹ Section 54 *Police Act 1996*

¹⁸² Section 1(24)(2), *Local Government Act 1999*

¹⁸³ <http://inspectorates.homeoffice.gov.uk/hmic/our-work/statement-purpose.html/?version=1>

¹⁸⁴ Section 2, *Crown Prosecution Service Inspectorate Act 2000*

system, through the process of inspection, evaluation and identification of good practice.” It inspects the Customs and Excise Prosecutions Office on a non-statutory basis.

Her Majesty’s Inspectorate of the National Probation Service reports on the work and performance of National Probation Service and of Youth Offending Teams (YOTs), particularly on the effectiveness of work aimed at reducing re-offending and protecting the public. It contributes to policy and service delivery by providing advice and disseminating good practice.¹⁸⁵

Her Majesty’s Inspectorate of Court Administration has a statutory remit to inspect and report to the Lord Chancellor on the administrative system supporting the courts, and on the performance of CAF/CASS (the Children and Family Court Advisory Support Service).¹⁸⁶

C. Consultation

A consultation document followed seeking views on the creation of new inspectorate for justice and community safety was published in March 2005¹⁸⁷ This prompted some concerns, particularly from the HM Chief Inspector of Prisons, Anne Owers, who expressed anxiety about how HMCIP’s role in monitoring human rights and decency in prisons could fit with the broader remit of a single inspectorate to look at service standards:¹⁸⁸

Consideration is now being given to the creation of a single criminal justice inspectorate, covering the work of police, courts, CPS, probation and prisons. There are undoubtedly gains to be made by examining the criminal justice process as a whole: modelling the kind of cross-cutting approach that is being commended to the criminal justice agencies themselves. But it is difficult to see how the inspection of places of custody, as an end in itself, fits into such a broad objective. Custodial inspection focuses on the culture and detail of individual establishments, not the system as a whole; it employs human rights based criteria, not service standards or government targets; it speaks directly to Ministers, Parliament and the public about what is going on in hidden custodial institutions.

Ministers have continued to assure me, and Parliament, that nothing that is planned will affect our methodology, the frequency and choice of inspections of individual places of detention, or the ability at any time to carry out unannounced inspections. It is seen by NOMS as key to improving the decency and morality of prisons. Most recently, Baroness Scotland confirmed in the House of Lords that planned changes would not alter the ‘nature, extent or efficacy’ of this

¹⁸⁵ section 57, *Criminal Justice and Court Services Act 2000*

¹⁸⁶ section 59 *Courts Act 2003*

¹⁸⁷ Criminal Justice System, *Inspection Reform: Establishing an Inspectorate for Justice and Community Safety Consultation*, March 2005, <http://www.homeoffice.gov.uk/documents/2005-cons-inspection-reform/2005-cons-inspection-reform-eng?view=Binary>

¹⁸⁸ Annual Report of HM chief Inspector of Prisons for England and Wales, HC 240 2003-04, 26 January 2005, p10
<http://inspectors.homeoffice.gov.uk/hmprisons/about-us/annual-reports.html/hmcipannualreport2003-04.pdf?view=Binary>

inspectorate. However, I have consistently made clear my serious concern as to whether this can be guaranteed within a unified criminal justice inspectorate – in which our approach, methodology and focus will be peripheral and potentially incongruous. I remain concerned that, over time and in practice, the sharp focus and robustly independent voice of the Prisons Inspectorate may be lost or muffled within a larger whole.

A number of other commentators expressed similar fears.¹⁸⁹

A policy document was published in November 2005, which summarised the responses to the consultation. The policy document confirmed that the merger would be going ahead, but emphasised that the existing statutory remit of inspection of prisons would be preserved:¹⁹⁰

The new inspectorate will have a general duty to inspect and report on the functioning of the justice system and the delivery by the bodies within it of their duties relating to wider community safety. It will be required to consult on and publish a programme specifying the inspections that it proposes to carry out in fulfilling that duty. There will be a power to inspect and report jointly with, and a requirement to co-operate with, other scrutiny bodies, and a prohibition of inspection of any aspects of work that are already adequately inspected by someone else.

We are committed to preserving the integrity of inspection of prisons and other custodial settings. Inspection of and reporting on the treatment and conditions of those in prison and other specified forms of custody will therefore be a special duty of the inspectorate. In defining the settings to which that duty will apply, we will preserve in full the existing statutory remit of the prisons inspectorate.

The Regulatory Impact Assessment sets out how the Government considers it has dealt with fears raised in the consultation.¹⁹¹

4.2 The responses revealed many differing views about the way forward and these were taken into account by the Government in developing its policy proposals. The majority of respondents supported the creation of an independent single inspectorate in principle, but did not necessarily support all the proposals in the consultation document. There was broad support for flexibility in the remit of a single inspectorate, for inspection to include human rights issues, and for the inspectorate to inspect whole processes across agencies rather than the efficiency and effectiveness of single agencies, especially to prevent duplication with internal scrutiny arrangements. There were mixed views on the functions that should be undertaken.

¹⁸⁹ See for example "A Merger Mystery", *Inside Time*, May 2005, http://www.insidetime.org/May_Articles/merger.htm, Howard League for Penal Reform

¹⁹⁰ Criminal Justice System, *Inspection Reform: Establishing an Inspectorate for Justice, Community Safety and Custody*, November 2005
<http://www.homeoffice.gov.uk/pdf/InspectionReformPolicyState1.pdf?view=Binary>

¹⁹¹ Home Office, Regulatory Impact Assessment, Legislation to establish an inspector for Justice and Community Safety, http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/final_RIA_published.pdf?view=Binary

4.3 The legislation will reflect these concerns, for example, by placing a specific duty on the inspectorate to inspect and report on the treatment and conditions of those in specified forms of custody (including prisons, court cells, young offender institutions and immigration removal centres), as well as a general duty to inspect and report on the functioning of the justice and community safety system. The existing statutory remit of the prisons inspectorate to inspect the treatment and conditions of those held in custody will be preserved in full. That will mean that whereas the general duty to inspect the justice and community safety system will allow considerable choice as to which of the other services receive more or less attention in any given programme of inspection, inspection of the treatment and conditions of those in custody will always be a priority.

D. The Bill

Part 4 of the Bill provides for the new Chief Inspector for Justice, Community Safety and Custody, and the duties of the inspectorate with regard to prisons are set out in clause 23. Like the current provisions, this places a particular duty on the Chief Inspector to report to ministers “on the treatment of prisoners and conditions in prisons”.

E. Comment

The Association of Chief Police Officers has expressed some concerns in response to the Bill:¹⁹²

We understand the need for a single Inspectorate that looks across the whole of the criminal justice system, but there are significant parts of policing that are unique and specialist in nature. Our concern is that there will be insufficient resources for proper inspection and the resulting quality assurance

V Other provisions

A. Forfeiture of indecent photographs (by Miriam Peck, Home Affairs Section)

The *Protection of Children Act 1978* currently allows for the forfeiture of indecent photographs of children following their seizure under warrants issued under the Act or following conviction for an offence in which the items were used. All such material must be brought before the court, even if its owner consents to its forfeiture.

Clause 37 and Schedule 11 of the Bill will insert new provisions into the 1978 Act which are intended to enable indecent images of children and the devices that contain them, such as computer hard drives (where deletion of the indecent images contained in them is technically impossible) to be forfeited following their seizure by the police.. The new arrangements will apply regardless of the particular powers under which the indecent photographs were seized. They could therefore be used, for example, where indecent

¹⁹² ACPO, *Bill provides support for more effective policing*, 25 January 2006, http://www.acpo.police.uk/pressrelease.asp?PR_GUID={19FA2C68-1F01-4CAD-B42C-7038C8FDB97C}

photographs were found on a computer that was seized in connection with an investigation into fraud or some other criminal matter.

Under the new procedures set out in Schedule 11, once the police no longer have a legitimate reason for retaining custody of property which has been seized, and

- the property is forfeitable because it contains indecent photographs or pseudo-photographs of children, and
- the police are not aware of any person who has a legitimate reason for possessing the property or any readily separable part of it

the police will have to issue a notice of forfeiture to those people they believe to be the owners of the property, the occupiers of the property from which it was seized and the person from whom it was seized.

The property will then be forfeited unless, within a month of the date of the giving of the notice of forfeiture, a person who wishes to contest the forfeiture gives written notice of his claim to the property to a constable, at any police station in the police area in which the property was seized.

If a notice of claim is received the police will have to decide whether to return the property or take proceedings in a magistrates' court to condemn the property as forfeited. When considering an application for forfeiture from the police the court will have powers to condemn the property or order that the property, or a separable part of it, be returned. The court will have to condemn the property if it is satisfied:

- that the property contains indecent photographs or pseudo-photographs of children and is therefore forfeitable and
- that no one who has given a notice of claim has a legitimate reason for possessing it.

If the court is not satisfied of these matters it will have to order that the property be returned.

A person could have a legitimate reason for possessing the property if, for example, the court concluded that it was not an indecent photograph of a child, or because it would not be an offence for a person to possess the material. Under sections 160 and 160A of the *Criminal Justice Act 1988*, for example, a person has legitimate reason for possessing an indecent photograph of a child over the age of 16 if the child is (or was at the time he obtained the photograph) his or her spouse or partner. This "legitimate reason" is expressly preserved by Paragraph 21(2) of Schedule 11 of the Bill.

Under paragraph 11 of Schedule 11, where the court orders that property be forfeited it may order the police to take certain steps in relation to the property and make that order conditional on a specified person paying the costs associated with these steps within a certain period. The *Explanatory Notes* comment that:

For example, a computer hard drive may have on it both indecent photographs and business records. If it is not possible to delete one but not the other, the court can order that the business records be copied before the hard drive is forfeited and then destroyed by the police.

B. Extradition (by Miriam Peck, Home Affairs Section)

Extradition to and from the UK is largely governed by the *Extradition Act 2003*, which completely reformed the law on the subject. The scheme of the 2003 Act is outlined in the *Explanatory Notes* that accompanied the Act as follows:

The Act makes provision for new extradition procedures, the main features of which are:

- a system where each of the United Kingdom's extradition partners is in one of two categories. Each country is designated by order of the Secretary of State for a particular category. It will therefore be possible for a country to move from one category to the other when appropriate, depending on the extradition procedures that the United Kingdom negotiates with each extradition partner;
- the adoption of the Framework Decision on the European Arrest Warrant creating a fast-track extradition arrangement with Member States of the European Union and Gibraltar;
- retention of the current arrangements for extradition with non-European Union countries with important modifications to reduce duplication and complexity;
- a simplification of the rules governing the authentication of foreign documents;
- the abolition of the requirement to provide prima facie evidence in certain cases;
- a simplified single avenue of appeal for all cases.

Under the new system introduced by the 2003 Act, each of the countries with which the UK has extradition arrangements is therefore now in one of two categories – Category 1 or Category 2 – designated by order of the Secretary of State. Different extradition procedures then apply, depending on whether the country requesting extradition is a Category 1 (or “Part 1”) territory or a Category 2 (or “Part 2”) territory.

The countries which have so far been designated as being in Category 1 are all European countries which have implemented the European arrest warrant scheme, although there is nothing in the 2003 Act which restricts designation as a Category 1 territory to those countries which operate the scheme.¹⁹³

Clause 39 of the *Police and Justice Bill 2005-06* provides for Schedule 12 of the Bill, which seeks to amend the *Extradition Act 2003* and other related statutory provisions concerning extradition. Many of the amendments are designed to deal with technical difficulties that have arisen since the implementation of the 2003 Act and prevent to

¹⁹³ See Jones and Doobay on *Extradition and Mutual Assistance* (Third Edition 2005) paras. 5-007-5-010

possible court challenges arising from them. Details of these difficulties and the amendments that are intended to deal with them are provided in the Bill's *Explanatory Notes*.

Paragraph 3 of Schedule 12 is intended to help implement a new draft agreement between the UK and the International Criminal Court (ICC) which will enable the UK to enforce sentences of imprisonment imposed by the ICC and allow prisoners convicted and sentenced by the ICC to be transferred to UK prisons to serve their sentences. Under the agreement the consent of the President of the ICC will be required before a person who has been transferred to the UK under these arrangements can be extradited to another state which has requested his extradition. Where a person has been extradited to the UK from another state and a third state subsequently requests their extradition from the UK, the *Extradition Act 2003* already permits the extradition to the third state to go ahead if the state from which the person was extradited to the UK gives its permission. As the ICC is a court rather than a state, the 2003 Act has to be amended to enable it to be included in these arrangements.

Section 70 of the *Extradition Act 2003* requires the Home Secretary to issue an extradition certificate if he receives a valid request for the extradition to a category 2 territory of a person who is in the United Kingdom, unless there is a competing, valid request for the person's extradition from another state and he decides under section 126 of the Act not to proceed with the request from the first state. The Home Secretary has no discretion about whether or not to issue a certificate under section 70 and once the certificate has been issued it is for the court to decide whether to terminate it at the extradition hearing, which will take place after the person has been arrested.

Paragraph 14(1)-(3) of Schedule 12 of the Bill is designed to provide the Secretary of State with discretion over whether or not to issue extradition certificates in cases involving requests for the extradition to Category 2 states of people who

- are refugees
- have been granted leave to enter or remain in the UK on the grounds that it would be a breach of Articles 2 or 3 of the European Convention on Human Rights (ECHR) to remove them to the territory to which extradition is requested

The discretion will apply only in respect of extradition to Category 2 states because there is a presumption that applications for asylum or protection from the EU member states which make up Category 1 are manifestly unfounded.

The Government considers that, where no reason can be shown why protection granted to a person should be removed, it would be inefficient and unfair to leave it until the court stage to terminate the request for that person's extradition. It is not intended that the existence of the discretion should automatically lead to a decision being made not to certify a request for extradition in such a case. The Government has stressed that each case is likely to turn on its own facts.¹⁹⁴ Where a certificate was issued, it would still be open to the person to use sections 81 and 87 of the 2003 Act to argue at his extradition

¹⁹⁴ *Explanatory Notes* paragraph 339

hearing that his extradition should be barred because his human rights would be infringed if he were ordered to be extradited to the state from which he had claimed asylum.¹⁹⁵

C. Cybercrime (by Edward White, Science and Environment Section)

1 Computer misuse

Computers are used to store and communicate sensitive information. Data on a computer can be accessed or altered by a user connected through a network from a remote terminal. This makes the computer a suitable target and an effective tool for criminal activity.

With the spread of the internet more computers are connected and more computers are being used to store different types of information. The potential for a malicious user to *hack* into another computer or system of computers is greater than ever before.

The techniques for accessing and altering systems are developing as the underlying technology moves on. A race between the hackers and the system developers has resulted in a sophisticated range of security systems to defend against an equally advanced range of infiltration techniques. Such techniques are no-longer aimed solely at large corporate systems but are now being used against personal household computers in an effort to get hold of the sensitive information (bank account details, credit card numbers etc.) now commonly stored on them.

At the end of 2004 the BBC reported on the boom in cybercrime over the past year, during which:

- The number of known computer viruses doubled to over 100,000.
- Phishing attempts, through which emails are used to con people into handing over confidential information, rose by 30%.
- There was a surge in the rise of "bot nets". These are remotely controlled, virus infected, computers that can be used to send out spam emails or hack into other systems. In September 2004 the Symantec Software Company released statistics which showed that the numbers of "bot computers" which were active per day rose from 2,000 to 30,000 per day.¹⁹⁶

2 Measures to tackle cybercrime

a. Computer Misuse Act 1990

Until 1990 there was no specific computer misuse legislation. Prosecutions for cybercrime were brought under existing legislation on fraud and criminal damage. In 1988 it became clear, when the House of Lords overturned the convictions of Robert

¹⁹⁵ *Explanatory Notes* paragraphs 338-340

¹⁹⁶ BBC, *Cyber crime booms in 2004*, 29 December 2004: <http://news.bbc.co.uk/1/hi/technology/4105007.stm>

Schifreen and Steve Gold, that this existing legislation was inadequate to cover computer hacking.¹⁹⁷ Schifreen and Gold used a conventional home computer and modem in late 1984 and early 1985 to gain unauthorised access to the British Telecom computer system.

Following the Lords ruling the Law Commission published a consultation document on computer misuse legislation. This resulted in Michael Colvin's private members bill which, supported by the Government, became the *Computer Misuse Act 1990*.

At the time the Bill's critics suggested that it was being rushed through and that it inadequately differentiated between different degrees of hacking.

The Act brought in 3 offences:

- Unauthorised access to computer material.
- Unauthorised access to a computer system with intent to commit or facilitate the commission of a further offence.
- Unauthorised modification of computer material.¹⁹⁸

b. International pressure

Since the *Computer Misuse Act 1990* was brought in the UK Government has been involved with two treaties on the prevention of cybercrime, both of which originated in Europe, and has called for international coordination to tackle abuses of computer systems.

In 1997 the Council of Europe established the *Committee of Experts on Crime in Cyberspace* to begin drafting a convention to encourage international cooperation in investigating and prosecuting computer crimes. The *Convention on Cybercrime* was opened in November 2001 in Budapest. The convention provided the first international outline for tackling computer misuse. It required that at a national level measures should be taken to establish as criminal offences the following:

- Unauthorised access to a computer,
- Unauthorised interception of non-public information transmitted from computers,
- Unauthorised interference with data stored on a computer,
- Unauthorised hindering or interference with a computer,
- Possession or sale of devices intended for use in the above.

The first three of these offences are already covered by the *Computer Misuse Act*. The fourth, hindering or interference with a computer may not be. It includes denial of service attacks (DoS) where a user is denied use of an online service because it has been maliciously overloaded. Such attacks are often generated by viruses that bombard servers with emails. The Home Office believe that the *Computer Misuse Act* does cover this activity but others have concerns:

¹⁹⁷ *R v Gold* (1988) 1 AC 1063

¹⁹⁸ *Computer Misuse Act 1990* http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900018_en_1.htm

Both the Home Office and the National Hi-Tech Crime Unit (NHTCU) believe that the CMA already outlaws denial of service attacks. But the Home Office has admitted that there is significant concern within the industry over this issue and appears to be accepting that there could be a need for an update; nobody has yet been prosecuted under the CMA for a DoS attack.

"We believe that the act covers most if not all types of hacking attacks, including denial of service attacks. However, we recognise there is a need for more clarity," the Home Office spokeswoman told ZDNet UK News on Wednesday.

Len Hynds, head of the NHCTU, agrees. "Our advice from the Crown Prosecution Service is that denial of service attacks are already covered by the Computer Misuse Act. The key question is whether a system is changed when data stored in the random access memory (RAM) is modified -- our advice is that it is," Hynds said, speaking at the e-crime congress on Monday.

Some in the industry disagree, though. According to Clive Feather, Internet expert at Thus, an urgent review of the law is needed.

"It is unclear whether denial of service is an offence at present. The person perpetrating a denial of service attack is not trying to break into a machine. CMA was written in the days of mainframes, not for the Internet. It needs updating fast," said Feather on Wednesday, giving evidence at an inquiry into data retention held by the UK Parliament's All Party Internet Group.¹⁹⁹

The fifth offence regarding the possession or sale of devices intended for cybercrime activities is not covered by UK law. The convention has received 42 signatories, including the UK, USA, Canada, Japan, South Africa and most Member States of the Council of Europe. It has only entered into force in the twelve states that ratified it.²⁰⁰

The *EU Council Framework Decision on attacks against information systems* was proposed on 19 April 2002 and adopted on 24 February 2005.²⁰¹ Its purpose is to harmonise criminal law in the area of serious attacks against information systems and in doing so contribute to the fight against organised crime and terrorism. It follows a similar line to the *Convention on Cybercrime* requiring EU Member States to implement legislation to counter unauthorised access to information systems, unauthorised interference with information systems and unauthorised interference with data on computer systems.

Member states are required to ensure legislation is transposed into national law by 16 March 2007.

¹⁹⁹ Law may be updated to cover DoS attacks, ZDNet News, December 2001.

<http://news.zdnet.co.uk/internet/0,39020369,2127395,00.htm>

²⁰⁰ <http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm>

²⁰¹ OJ L 069 , 16 March 2005

c. *Inquiry by the All Party Internet Group*

In March 2004 the All Party Internet Group (APIG) began an enquiry into a revision of the *Computer Misuse Act*. APIG suggested the *1990 Act* was outdated and that in fourteen years computer misuse had moved on beyond the scope of existing legislation. The enquiry focused on:

- Whether the CMA is broad enough to cover the criminality encountered today;
- Whether the CMA's generic definitions of computers and data have stood the test of time;
- Whether there are "loopholes" in the Act that need to be plugged; What revisions may be needed to meet our international treaty obligations;
- Whether the level of penalties within the CMA is sufficient to deter today's criminals²⁰²

A final report was published in June 2004. It made the following key recommendations:

- Add a denial-of-service (DoS) offence to the CMA. The CMA already makes many DoS attacks illegal but there is significant value in adding an explicit offence to the legislation. In particular, this would send a clear signal to the police, CPS and Courts that these attacks should be taken seriously. Also, publicity about the new offence will reach DoS attackers and some will be deterred by knowing that their actions are clearly criminal.
- Increase the tariff for CMA section 1 (hacking) offences from six months to two years. The current sentence is too low given the serious consequences that can result from hacking. As a side effect, this will make the offence extraditable and it will meet the requirements of the Treaty on Cybercrime.
- Ensure that the Director of Public Prosecutions (DPP) sets out a permissive policy for private prosecutions under the CMA. This would allow private companies to tackle cases that the police/CPS do not presently consider as priority matters.
- Provide educational material about the CMA on the Home Office website. Evidence to the inquiry showed a remarkable lack of understanding of what the CMA already criminalised. New laws are currently well described on the Home Office website - priority should be given to the CMA to ensure it is covered in similar detail.
- Improve information on cybercrime by use of statistical sampling. It remains difficult to formulate policy on cybercrime issues because there are no figures (and not even very many anecdotes) to base that policy upon. Full-scale data collection remains a long way off. There is a role here for statistical sampling to estimate overall totals.

²⁰² <http://www.apig.org.uk/archive/activities-2004/computer-misuse-inquiry/computer-misuse-press-release.html>

- Introduce a new Fraud Bill; APIG received a number of responses that are best dealt with by reforming the law on fraud rather than the CMA. The Government is finally dealing with the 2002 Law Commission report on Fraud. There should be no further delay and a new Fraud Bill should come before Parliament as soon as possible.²⁰³

2 The Bill

Clauses 33 to 35 of the *Police and Justice Bill* amend sections 1 and 3 of the *Computer Misuse Act 1990*.

Clause 33 of the Bill increases the penalty for the offence of attempting to gain unauthorised access to a computer under section 1 of the 1990 Act. The offence is made indictable and the maximum sentence is increased from six months to two years imprisonment.

Clause 34 replaces section 3 of the 1990 Act. It clarifies the offences described by section 3 relating to unauthorised actions with the intent to impair the operation of a computer. The clause aims to ensure that DoS attacks are criminalised. Subsection 6 of Clause 34 increases the penalty for these offences on indictment from five to ten years imprisonment.

Clause 35 introduces an offence of making, supplying or obtaining articles for use in computer misuse offences. It will be made an offence to supply, offer to supply or obtain items for use in gaining unauthorised access to a computer or for unauthorised modification of a computer. The offence will carry a maximum two year prison sentence on indictment.

3 Comment

Industry and other organisations have been calling for changes to the *Computer Misuse Act* since it was first passed. With the growth of the internet over the past ten years the need for these changes has become more pressing. In particular the APIG highlighted the need for new legislation to cover denial of service attacks. The Bill addresses this issue and also attempts to criminalise the use of certain tools used by hackers. However in doing so the legislation may also criminalise the legitimate use of similar tools by developers. A report in *The Register* explains this and highlights other concerns:²⁰⁴

The UK Government plans to toughen up computer crime laws under proposals outlined in the *Police and Justice Bill* on Wednesday. The bill would double the maximum jail sentence for hacking into computer systems from five years to ten years, a provision that will classify hacking as a more serious offense and make it

²⁰³ All Party Parliamentary Internet Group, *Revision of the Computer Misuse Act: Report of an Inquiry by the All Party Internet Group*, June 2004

<http://www.apig.org.uk/archive/activities-2004/computer-misuse-inquiry/CMAReportFinalVersion1.pdf>

²⁰⁴ Home Office pushes tough anti-hacker law, *The Register*, 26 January 2006.

http://www.theregister.co.uk/2006/01/26/uk_computer_crime_revamp

easier to extradite computer crime suspects from overseas. Denial of service attacks, something of a grey area under current regulations, would be clearly classified as a criminal offense under amendments to the 1990 Computer Misuse Act (CMA) proposed in the bill.

Industry pressed for changes along these lines even prior to the 2004 inquiry by MPs that recommended changes to the CMA to modernise UK computer crime law. Other provisions in the bill are likely to prove far more controversial. [Clause 35](#) of the bill contains provisions to ban the development, ownership and distribution of so-called "hacker tools".

But the clause fails to draw adequate distinction between tools which might be used for legal as well as unlawful purposes. *Reg* readers have been quick to point out that the distinctions between, for example, a password cracker and a password recovery tool, or a utility designed to run DOS attacks and one designed to stress-test a network, are not properly covered in the proposed legislation. Taken as read, the law might even make use of data recovery software to bypass file access permissions and gain access to deleted data, potentially illegal.

D. Complaints about immigration and asylum enforcement functions

The new Independent Police Complaints Commission (IPCC) was established from 1 April 2004 under Part 2 (sections 9-12 and Schedule 2) of the *Police Reform Act 2002*. A summary of the new system was provided in a Home Office press notice issued when the Chair was appointed.²⁰⁵

1. The Independent Police Complaints Commission, established under the Police Reform Act, will replace the Police Complaints Authority on 1 April 2004. The new organisation will be given a wide range of powers, over and above those currently available to the PCA.
2. The IPCC will have its own body of investigators with all the necessary powers to be able to effectively investigate serious matters of police misconduct completely separate from the police, whether or not a complaint has been made.
3. Complainants will be given new rights of appeal to the IPCC against police decisions on the handling of their complaint and new rights to information. The IPCC will be the guardian of the new system and it will have to fulfil a statutory function of securing appropriate independence in the system and ensuring a system is maintained that has the confidence of the public.
4. To achieve this the IPCC will:

²⁰⁵ "Chair of Independent Police Complaints Commission appointed", Home Office press notice 345/2002, 12 December 2002, http://press.homeoffice.gov.uk/press-releases/Chair_Of_Independent_Police_Comp

- have its own investigative teams with all necessary police powers to allow it to investigate serious matters of police misconduct separately from the police;
- manage or supervise police investigations;
- be able to consider and uphold appeals from complainants;
- monitor and report on the complaints system and be responsible for spreading best practice.

Library Standard Note SN/HA/2056 gives further information. Background on the old system and the changes is provided in Library Research Paper 02/15.²⁰⁶

Clause 38 of the Bill would expand the remit of the IPCC to provide oversight of personnel in the Immigration and Nationality Department exercising specific enforcement functions. Background to the change was given in the Regulatory Impact Assessment:²⁰⁷

Currently, immigration arrest activity is subject to a Protocol between the Immigration and Nationality Directorate (IND) and the Complaints Audit Committee (CAC). This provides for accelerated handling of complaints and a scrutinising role for the Complaints Audit Committee (CAC). This is not a statutory role and principally it fulfils an audit function.

The Immigration Service is in the process of developing a self-sufficient enforcement capability that can operate without reliance on continuous police support. This includes the development of its arrest capability and is consistent with a number of other measures being taken towards creating a professional, self-sufficient immigration enforcement capability. Immigration officers will carry out operations both in arrest teams (independently of the Police) and with police assistance where necessary.

An internal review of serious complaints related to immigration enforcement activity led to the conclusion that there should be a body with oversight of this activity, including both arrest team operations undertaken independently of the police and those operations with police assistance. This would ensure comprehensive independent oversight of enforcement functions, exactly the same as exists for the police. The Independent Police Complaints Commission (IPCC) is therefore ideally placed for this role.

The IPCC, established under the Police Reform Act 2002, already exists to examine complaints against actions undertaken by police officers using the same or similar powers as Immigration Officers.

VI Territorial extent

The Bill extends to England and Wales, and certain provisions also extend to Scotland and Northern Ireland. These are:

²⁰⁶ <http://www.parliament.uk/commons/lib/research/rp2002/rp02-015.pdf>

²⁰⁷ Home Office, Regulatory Impact Assessment, *The introduction of oversight by the Independent Police Complaints Commission (IPCC) of certain functions of Immigration Officers (IOs), in England and Wales, 2006*, http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/RIA-IPCC_v5.pdf?view=Binary

- 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

A Sewel motion was lodged with the Scottish Parliament on 8 February 2006 to cover the devolved aspects of the Bill in relation to Scotland, including the NPIA, the new Inspectorate, the computer misuse provisions and the extradition changes.²⁰⁸ It was debated by the Parliament's Justice 2 Committee on 21 February 2006.²⁰⁹

²⁰⁸ Scottish Executive, *Legislative Consent Memorandum Police and Justice Bill*, 8 February 2006, <http://www.scottish.parliament.uk/business/legConMem/pdf/policePublicLcm.pdf>

²⁰⁹ Scottish Parliament Official Report J2, 21 February 2006, <http://www.scottish.parliament.uk/business/committees/justice2/or-06/j206-0402.htm#Col1989>