

Comments and Suggested Amendments to the Police (Northern Ireland) Bill from the Committee on the Administration of Justice (CAJ)

20th December 2002

Clause 1 Consultation with Board

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

Page 1, line 8, delete from “shall” to the end of line 9 and insert “obtain the agreement of the Board to the proposed objectives or revision”.

Page 1, line 18, delete from “shall” to the end of line 19 and insert “obtain the agreement of the Board to the proposed code of practice or revision”.

Clause 3 Public Meetings of the Board

The reduction of the number of public meetings the Board has to hold each year is a clear departure from Patten who recommended that the Board should “meet in public once a month” (para 6.36). The 2000 Act in fact set the minimum number of public meetings each year at ten. This proposal will reduce it still further to eight. This is a retrograde step in terms of transparency and public accountability. Nothing in the revised Implementation Plan nor the public part of the Weston Park agreement indicated that this departure was envisaged.

Page 2, line 15 for “eight” substitute “twelve”.

Clause 10 Approval of proposals relating to inquiries by Board

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

Page 6, line 41, for “subsections (2) and (3)” substitute “subsection (2)”.

Page 6, line 45 delete from “, and” to end of line 1 on page 7.

Page 7 delete subsection (3) at line 2.

Page 7, line 6 for “(3)” substitute “(2)”.

Clause 11 Investigations by the Ombudsman

We welcome the introduction of an investigation power into policies and practices on the part of the Ombudsman. However, we are concerned at the restriction placed on this power by the use of the word “current” in line 13, page 7 as a result of the amendment moved by Lord Williams of Mostyn. There is no such restriction on the Ombudsman’s power to investigate individual complaints. In relation to such complaints she has the power to investigate subject to certain time constraints which can be overcome in cases of public importance. We are not therefore persuaded of the need to include the word “current” in this clause and would therefore urge members to oppose this element of the amendment.

We recognise the positive impact which Lord Williams’ amendment has in relation to removing the possibility of the Chief Constable or the Board appealing a decision of the Ombudsman to investigate a policy or practice to the Secretary of State. We therefore support that aspect of his amendment. We are not however convinced of the need for the exception in relation to the Regulation of Investigatory Powers Act 2000. We believe the subject matter of RIPA is exactly the sort of area which causes public concern about policing. To exclude the primary accountability mechanism in Northern Ireland from such an area seems counter productive in terms of reassuring the public. In addition it appears to us that the Tribunal established under section 65 of RIPA will deal with essentially individual complaints and will not consider policies and practices. This apparent gap may be filled by the Police Ombudsman. We would therefore urge members to oppose this aspect of Lord Williams’ amendment.

Clause 15 Core Policing Principles

This clearly enhances the importance of community policing which is welcome and in line with Patten and the revised Implementation Plan. We remain of the view however that reference to human rights should also be made explicit in the core principles. It is clear that Patten regarded human rights as central to his report and the future of policing in Northern Ireland, and its omission in this section undermines its significance.

Page 9, line 14 delete “and”;

Page 9, line 15 after “community” insert “and,”

Page 9, line 16 insert “(c) protecting human rights.”

Clause 17 Provision of information to Board

The insertion of the word “reasonably” is an undue restriction on this power and is not included in the sections which detail the Board’s powers to obtain reports from the

Chief Constable. There is no explanation for its addition here. This word should be deleted.

Page 10, line 5 delete “reasonably”.

Clause 19 Disclosure of information and holding of inquiries

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

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

Now the grounds are three fold:

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

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

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

The NIO indicated in the revised Implementation Plan that they would substitute “sensitive personnel” for “sensitive personal” and define it. They have not done this. The definition included in the draft clause relates to “personnel information”. There is no definition of “sensitive”. We would have concerns that all of these grounds are open to potential abuse. We believe they should be narrowly drawn to limit that potential. We see no reason for the inclusion of grounds not mentioned in Patten. We also believe that information which would put someone’s life in danger will already be covered by the existing qualifications, by the application of Public Interest

Immunity during the inquiry, or by the state's obligations under article 2 of the European Convention on Human Rights.

We have not prepared draft amendments for this clause but believe it should be redrafted in light of the above comments.

Part 2 Police Powers

This Part of the Bill allows the Chief Constable to designate suitably skilled and trained civilians as police officers for certain purposes and allows him/her to confer substantial powers on these officers. While we understand that it is important for the Chief Constable to have a degree of flexibility in terms of staff under his control we are concerned that this Part may well have the potential to undermine some key aspects of Patten. In particular we are concerned that designating substantial numbers of civilian staff (who according to recent press coverage are mainly Protestant), may dilute the impact of the 50/50 recruitment to the police proper. If therefore it is the case that designated officers will not form part of the recruitment statistics for the purposes of the 50/50 recruitment mandate, we believe the legislation should be amended to ensure they do indeed form part of those figures.

In addition it is not clear if these designated officers will be subject to the jurisdiction of the Police Ombudsman.

We have not prepared draft amendments for this Part but believe it should be redrafted in light of the above comments.