

NORTHERN IRELAND HUMAN RIGHTS COMMISSION

POLICE (NI) BILL 2000

BRIEFING NOTE FOR THE COMMITTEE STAGE IN THE HOUSE OF COMMONS

Date prepared: 9 June 2000

1. The Northern Ireland Human Rights Commission

The Northern Ireland Human Rights Commission (NIHRC) is a body which was provided for in the Good Friday Agreement and formally established under the Northern Ireland Act 1998 on 1 March 1999. The Commission's role is to promote and protect human rights in Northern Ireland. It consists of one full-time Commissioner and nine part-time Commissioners. At present there are a further nine members of staff working for the Commission.

The Commission's duties and powers fall into four categories: (a) reviewing (b) advising (c) promoting and (d) litigating. We have the specific duty to advise the Secretary of State of legislative and other measures which ought to be taken to protect human rights in Northern Ireland (section 69(3) of the Northern Ireland Act 1998).

Policing and criminal justice have been identified as key areas of work in the Commission's Strategic Plan 2000-2002. The NIHRC may supplement the current briefing paper from time to time with additional papers containing specific recommended amendments to the Bill. Any MP who is anxious to obtain information about relevant human rights law and practice in Northern Ireland is invited to contact the Commission on (tel:) 028 9024 3987 or (fax) 028 9024 7844 or (e-mail:) nihrc@belfast.org.uk. Our address is Temple Court, 39 North Street, Belfast BT1 1NA.

2. The NIHRC and policing in Northern Ireland

Shortly after the NIHRC was established it discussed whether to make a submission to the Patten Commission, which was then still sitting. We decided not to do so because, as members of a new body which was still finding its feet, we felt that we could not formulate an agreed submission in time. Instead we ensured that the Patten Commission was made fully aware of all the international human rights standards which impact on policing and we undertook to examine the report of the Patten Commission with those standards in mind. In the interim we also agreed to meet with the RUC's Human Rights Act Implementation Working Group. We have since observed training on that Act being delivered.

After the publication of the Patten Report we published our own response to it in November 1999. A copy of this can be requested from the Human Rights Commission or can be accessed through our website at www.nihrc.org.

The Commission has publicly expressed its concern about the failure of the Government to adequately consult it on the content of the Police (NI) Bill. Despite written requests to senior NIO officials (dating back to February 2000), no effort was made by the officials or by Ministers to seek the views of the Commission on the content of the Bill. As a statutory body charged with the duty of advising the Government on human rights matters, we were very disappointed at the Government's attitude towards us. We eventually received a copy of the Bill less than 24 hours before its presentation in Parliament.

3. Human Rights and the Police (NI) Bill

The NIHRC wholeheartedly agreed with the Patten Commission's proposition that "the fundamental purpose of policing should be, in the words of the Agreement, the protection and vindication of the human rights of all" (para. 4.1). In responding to the Patten Report we made a series of recommendations aimed at strengthening its proposals relating to human rights.

It is disappointing that, far from building on Patten's proposals, the draft legislation fails to provide even the basic level of human rights protection needed to secure confidence in policing in Northern Ireland.

➤ Comprehensive Programme of Action on Human Rights – Patten Recommendation 1

Patten recommends that "there should be a comprehensive programme of action to focus policing in Northern Ireland on a human rights-based approach. There is no specific provision relating to this programme in the draft legislation but it is covered in the Implementation Plan. According to this Plan, lead responsibility for developing the Programme of Action lies with the Northern Ireland Office, the Chief Constable and the Policing Board. The NIHRC is to be consulted. The proposed deadline for publication of the Programme is April 2001, yet the Policing Board does not become fully operational until April 2001 (running on a shadow basis from January to March). It is difficult to see how the Policing Board will be able to play a meaningful role in developing this crucial work given this timescale.

It is the NIHRC's recommendation that the implementation of Patten, in relation to this and other issues, should not be left in the hands of the Northern Ireland Office, Chief Constable and current Police Authority. If there is to be truly a new beginning to policing in Northern Ireland other organisations such as the Human Rights Commission, the Equality Commission and the Police Ombudsman should have key roles to play in ensuring that reforms are fully compliant with international law and best practice.

Our experience of consultation to date in relation to this Bill and other police-related issues does not make us optimistic about the NIHRC's role in relation to the process. The RUC has been open to meeting with the Commission, allowing us prior access to selected documents, *e.g.* training manuals, and facilitating us in observing police training. However, it has demonstrated a degree of reluctance to adapt the contents of its programmes to include our recommendations.

The term consultation is always open to interpretation. It is important that, throughout the Bill and Implementation Plan, the concept is more specifically defined. In our view the concept of consultation should incorporate an obligation to take fully into account the views of those being consulted and to give reasons why those views have not been accepted. We would remind MPs of what is stated in the UN General Assembly Resolution 34/169 of 17 December 1979 (adopting the *Code of Conduct for Law Enforcement Officials*):

“...like all agencies of the criminal justice system, every law enforcement agency should be representative of *and responsive* and accountable to the community as a whole” (emphasis added).

The NIHRC recommends that in clause 30(1) of the Bill the protection of human rights should be added to the list of general duties of members of the police force.

➤ New Police Oath (Patten Recommendation 2)

Patten recommends a new oath, to be taken individually by all new and existing police officers, expressing an explicit commitment to upholding human rights. This oath is now only to be taken by new recruits and the text suggested by Patten has been amended to remove the commitment to “accord equal respect to all individuals and to their traditions and beliefs”(clause 36). **The NIHRC recommends that clause 36 be amended to reflect the proposal of Patten.** We would remind MPs of Article 6 (1) of the European Framework Convention for the Protection of National Minorities (1995), which the UK has ratified:

“The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity...”

➤ Code of Ethics (Patten Recommendation 3)

Patten recommends a new Code of Ethics integrating the European Convention on Human Rights into police practice. Clause 48 of the draft legislation gives the Chief Constable responsibility for issuing, publishing and “from time to time” revising this Code. The legislation requires the Chief Constable to consult the Policing Board, the

Police Association, the Secretary of State and “any other person appearing to the Chief Constable to have an interest in the matter.”

The Implementation Plan differs from the legislation in that it expressly stipulates that the Chief Constable will formulate the new Code “in consultation with the Human Rights Commission and the police Ombudsman.” Furthermore, the Plan states that the Code will be “subject to approval, and will be issued by, the Policing Board.”

The NIHRC recommends that the power to issue and revise the Code should statutorily lie with the Policing Board and that there should be a statutory requirement to consult the Northern Ireland Human Rights Commission on the Code.

In its response to Patten the NIHRC applauded the proposal for a new Code but recommended that it say that police officers are required to disobey orders from superior officers if those orders involve a breach of a person’s human rights. Protection for ‘whistleblowers’ should also be included in the Police (NI) Bill itself.

The NIHRC recommends that there should be a statutory requirement that the Code will incorporate not only the ECHR but also all other relevant international human rights standards affecting law enforcement.

➤ Police Training in Human Rights

The NIHRC welcomed the recognition in Patten of the importance of training all police officers in fundamental principles and standards of human rights. We also welcomed the suggestion that awareness of and respect for human rights should be part of police officers’ appraisal system (para. 4.10). The NIHRC expressed the hope that the police will rely upon human rights experts outside the police to help them with their training, appraisals and promotions decisions.

The draft legislation contains little on police training, even where the Implementation Plan states that there is legislative provision in the Bill.

The Implementation Plan gives lead responsibility for developing human rights training jointly to the Chief Constable and the Policing Board. The timescale for this is again problematic in that the new Training, Education and Development Strategy is to be published by April 2001 – the month that the Policing Board is expected to become fully operational.

The Implementation Plan gives responsibility to the Chief Constable for reviewing the recruit training programme and considering the scope for increasing the degree of civilian input. He also appears to have sole responsibility for considering the necessary qualifications and expertise for the Director of the new Training College. There are no obligations on him to consult on these important issues.

There is no specific role given to external human rights experts, particularly the NIHRC, in the preparation of the training, education and development strategy. **The NIHRC recommends that provision should be made for this in the Police (NI) Bill.**

The Policing Board and the local District Policing Partnerships should have been given specific legal power to oversee training.

4. Accountability

There can be no protection of human rights without adequate means of ensuring accountability in policing. The NIHRC is therefore anxious to ensure that an array of accountability mechanisms is put in place in order to guarantee that any malpractice within the new police force can be easily identified and rectified. It is important that no single entity be given too much control in this context: a network of interlocking responsibilities is more likely to produce a fool-proof accountability system. What is vital is that relevant evidence concerning alleged malpractices can be easily obtained by any investigating authority.

(a) Democratic accountability

Unfortunately the Police (NI) Bill falls short of Patten’s recommendations for the creation of effective accountability mechanisms. In particular, weaknesses in the powers of the Policing Board and the Ombudsman’s office give rise to concern.

➤ The Policing Board

In general the NIHRC welcomed the recommendation that there be a new Policing Board in Northern Ireland. In wishing to focus our comments in response to Patten on the human rights dimension to policing, we made no comment on the precise arrangements proposed by the Patten Report for the composition of the Policing Board. In general we agreed that it is appropriate to lessen the control of central government – exercised through the Secretary of State – over the police in Northern Ireland.

Patten recommended that the new Policing Board should be “empowered and equipped to scrutinise the performance of the police effectively (para. 6.3). Unfortunately additional powers given to the Secretary of State in the draft legislation potentially threaten the ability of the new Board to effectively hold the Chief Constable and the police service to account. The Police Authority for Northern Ireland has publicly expressed concern about the restrictions on the Board’s powers. **We recommend that paragraph 8(1) of Schedule 1 should be amended in line 3 by adding, after “Northern Ireland”, the words “and contains an expertise in international human rights”.**

Whatever the final name of the new police organisation in Northern Ireland is to be, the NIHRC believes that it should be referred to as a police service and not as a police force. **We therefore recommend that in clause 2(1) of the Bill, line 1, the word “force”**

should be deleted and the word “service” inserted in its place. Comparable adjustments would need to be made at many other points in the Bill.

Patten recommended that the Policing Board should be able to hold the Chief Constable to account by calling for reports and conducting inquiries into policing issues (paras. 6.22 & 6.23). Patten stated that the grounds on which the Chief Constable might question these requirements should be strictly limited to issues such as those involving national security, sensitive personnel matters and cases before the courts. In such cases the Secretary of State would have the final decision about whether the Board’s requirement should stand.

However, clauses 55 and 56 of the draft legislation add to the grounds on which the Chief Constable might refuse to provide a report, or the Secretary of State may prohibit an inquiry. These additional grounds include that the report “relates to a matter which is being investigated by a statutory authority”, or “because it would, or would be likely to, prejudice the prevention or detection of crime, the apprehension or prosecution of offenders or the administration of justice”. The same grounds can be given for prohibiting an inquiry by the Policing Board as well as the ground that in the Secretary of State’s view “the holding or continuation of an inquiry ... would not be in the interests of the efficiency or effectiveness of the police force.”

Furthermore, under the draft legislation the Policing Board must get the Secretary of State’s approval before appointing any person, including its own staff, other than the Comptroller and Auditor General, the Ombudsman, or the inspector of constabulary, to conduct an inquiry.

The Policing Board may not carry out an inquiry into past acts or omissions of the police service (clause 56 (9)).

Patten recommended that the Policing Board monitor the performance of the police service as a whole in respect of human rights (para 4.12). However, the draft legislation requires that the Board monitor performance only in relation to “complying with the Human Rights Act 1998”(clause 2(3)(b)(ii)). **We recommend that in clause 2(3)(b)(ii), after the date “1998”, there be inserted the words “and other international human rights standards affecting law enforcement”.**

Patten recommended that responsibility for inspecting all custody and interrogation suites should rest with the Policing Board and that Lay Visitors should be empowered not only to inspect the conditions of detention (as at present) but also to observe interviews on camera subject to the consent of the detainee (as is the case for cell visits) (para. 8.16). **The NIHRC recommends that the Bill be amended to reflect the Patten proposal. Thus, in clause 2(3)(d), we suggest that a sub-paragraph (iv) should be inserted stating that the Policing Board shall assess “the effectiveness of measures taken to inspect all custody and interrogation suites and to hear the views of detainees on the conditions in which they have been detained and interrogated”.**

Patten recommended that the Policing Board have responsibility for actively monitoring the policing of public order situations (para 9.19). This is missing from the draft legislation.

In recognition of the need for increased transparency in accountability mechanisms, the Patten report recommended that the Policing Board should meet in public once a month, to receive a report from the Chief Constable (para. 6.36). While the Implementation Plan accepts this recommendation, it is not given a statutory basis.

Generally, the NIHRC recommends that in all respects the recommendations in the Patten Report concerning the Policing Board should be reflected in the Police (NI) Bill.

➤ District Policing Partnerships

The draft legislation prohibits a person who has previously been convicted of any scheduled offence, or convicted of an offence with a term of imprisonment, suspended or not, from being appointed as an independent member to a DPP (Schedule 3, para. 8(2)). The Commission is concerned about the equality and human rights implications of this prohibition and will be looking closely at and commenting on this aspect of the legislation.

The NIHRC believes that District Policing Partnerships should as far as possible be representative of their districts. To help achieve this **we recommend that paragraph 4 of Schedule 3 should be amended so as to include the kind of phraseology used in paragraph 8 of Schedule 1 in relation to the independent members of the Policing Board. This would require the council “to secure that as far as is practicable the membership of the Board is representative of the council area”.**

(b) Legal Accountability - the office of the Ombudsman

In responding to Patten the NIHRC welcomed the creation of a Police Ombudsman’s office through the Police (NI) Act 1998. We stated that the Ombudsman’s staff should not be permitted to have a history of employment in the RUC and that the office must be adequately resourced to perform its statutory functions effectively.

The NIHRC enthusiastically endorsed all of the recommendations made in para. 6.41 of the Patten report concerning the powers of the Police Ombudsman.

The draft legislation does not reflect the full range of powers recommended by the Hayes Report (which preceded the 1998 Act) or by Patten (clauses 58-61).

Patten recommended that:

- The Ombudsman should take initiatives, not merely react to specific complaints received. He/she should exercise the power to initiate inquiries or investigations even if no specific complaint has been received (para. 6.41)
- The Ombudsman should be responsible for compiling data on trends and patterns in complaints against the police, or accumulations of complaints against individual officers (para. 6.41)
- The Ombudsman should exercise the right to investigate and comment on police policies and practices, where these are perceived to give rise to difficulties, even if the conduct of individual officers may not itself be culpable, and should draw any such observations to the attention of the Chief Constable and the Policing Board (para. 6.41).
- The Ombudsman should have access to all past reports on the RUC (para. 6.41).

The legislation does not implement these or the other recommendations contained in Hayes in full. In particular:

- The Secretary of State has the power to prevent the Police Ombudsman from investigating complaints in connection with the past (clause 60).
- The Ombudsman may make a report to the Chief Constable and the Board on matters concerning the practices and policies of the force. However, the report may not identify any individual or disclose any information from which the identity of any individual may be established (clause 58). The Police (NI) Act 1998 places restrictions on the Ombudsman's office so that she cannot actually conduct an investigation into police policies.
- The legislation places an obligation on the Ombudsman to supply statistical information on the complaints system and trends and patterns in complaints (clause 59). However, it does not place any obligation on the Ombudsman to provide information on accumulations of complaints against individual officers.

The Police Ombudsman designate has issued a statement indicating that the Secretary of State is willing to reconsider some aspects of the Bill relating to her office. We look forward to receiving details of proposed amendments. **In the meantime the NIHRC recommends that the proposals made in the Hayes and Patten Reports on this topic should be fully reflected in the provisions of the Police (NI) Bill.**

5. Representativeness of the police service

The NIHRC agreed with Patten that it is right that a police service should by and large be representative of the society it polices. This goal is recognised by the United Nations.¹ In the context of Northern Ireland this means improving the percentage of police officers who are Catholic, those who are female, those who are disabled and those who are from ethnic minorities.

¹ UN General Assembly Resolution 34/169 (17 December 1979): "... like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive to the community as a whole."

We were supportive of the range of recommendations on recruitment contained in Chapter 15 of Patten. It is important that imaginative capacity-building strategies should be developed and that involvement in the development of such strategies should not be confined to the Northern Ireland Office, Chief Constable and Police Authority. We also concluded that the kind of positive discrimination recommended by Patten was the only viable option at this time: *i.e.* that for the first 10 years an equal number of Protestants and Catholics should be drawn from the pool of qualified candidates (para. 15.10).

The draft legislation makes provision for this form of positive discrimination in recruiting to the police service. Patten recommended that the ratio of recruits should be kept to 50:50 for *at least* 10 years. However, the draft legislation states that the “temporary provisions” allowing this positive discrimination shall expire after three years. Thereafter the Secretary of State, in consultation with the Policing Board, may make a further order allowing them to stay in force for a period not exceeding three years (clause 44). We note what the Secretary of State said in relation to this provision in the Second Reading debate on 6 June 2000 and we hope that a Government amendment will reflect his new position. We would remind MPs that the international standard in this context would be that the temporary recruitment system should be kept in place until the requisite degree of representativeness of society has been achieved, however long that takes.

Our understanding of current European Community law is that such preferential recruitment policies would *not* be unlawful. In the Annex to our response to Patten published in November 1999 (at pages 27 to 30) we explain at some length how we have reached this conclusion. We believe that additional European case-law decided since then has endorsed such a position.

The NIHRC recommends that the Patten proposals on this topic be fully reflected in the provisions of the Police (NI) Bill.

6. Culture, ethos and symbols

In responding to Patten, we noted that the NIHRC’s focus on international human rights law leads us to affirm that substantive change which would ensure human rights protection in the future is much more important than symbolic change. However, symbolic change should not be dismissed as being unimportant to human rights and the rule of law.

We stated that the families of those officers who have been killed, and the police officers themselves who have survived but with disabilities, should be accorded full recognition as victims along with the very many other people whose lives have been shattered by the troubles in Northern Ireland since 1968. The NIHRC has launched a Victims Rights Project which will focus on the needs of all victims of violence in Northern Ireland.

We also noted in our response to Patten that “[t]o implement the peace agreement in Bosnia-Herzegovina the UN-appointed Office of the High Representative issued an order requiring ‘immediate display and use of common insignia and symbols of a neutral or

inoffensive nature, including but not limited to uniform badges, patches, belt buckles, flags, coats-of-arms and administrative seals and stamps”.

We see that the draft legislation gives the Secretary of State the power to decide on the name of the police service (clause 69 (3)) and the design of the new badge and symbols (clause 50). We agree with the Patten Report that a new badge and a special flag should be adopted to symbolise the new beginning to policing in Northern Ireland. We also acknowledge the importance of a neutral working environment in an organisation as vital as the police service.

The NIHRC is conscious that the culture and ethos of a police service derive from much more than its name or symbols. We hope that the service’s Code of Ethics, and its day-to-day administration, will genuinely reflect both cultural diversity and an ethos of openness, fairness, understanding and helpfulness. **We recommend that the Bill be amended to ensure that this character is given to the Code of Ethics.**

7. Equality Duties

In responding to Patten, the NIHRC stated that one of the most disappointing aspects of the Report was its complete failure to address the question of whether or not the police in Northern Ireland should be obliged, along with other public authorities in Northern Ireland, to comply with the equality duties (to promote equality of opportunity and good relations) set out in section 75 of the Northern Ireland Act 1998.

The NIHRC recommends that this situation should immediately be rectified by the Secretary of State in order to bring the police service into line with other public authorities. This could only be of benefit to all communities in Northern Ireland and to the police themselves.

8. Emergency Legislation and the Use of Force

The NIHRC remains disappointed at the Government’s failure to repeal the Prevention of Terrorism and Emergency Provisions Acts. Indeed we note that Parliament has just this week extended the life of the Emergency Provisions Act, in our view unnecessarily.

The NIHRC recommends that, if any police officers in Northern Ireland are to be armed in future, they should be obliged by law to adhere to the standards set down by the United Nations, in particular the UN’s Basic Principles on the Use of Force and Firearms.

The draft legislation empowers the Secretary of State to issue and revise guidance on the use by members of the police force of equipment designed for use in maintaining or restoring public order (clause 49). He is statutorily obliged to consult the Board, the Chief Constable and the Police Association. **The NIHRC recommends that this statutory obligation should extend to consultation with the Northern Ireland Human Rights Commission and that the Secretary of State should be statutorily**

obliged to base his guidance on the standards set down in international human rights law and guidelines.

9. Oversight and Implementation

The NIHRC welcomes the appointment of an Oversight Commissioner to oversee the implementation of the Patten report's recommendations. We look forward to providing his office with assistance on the area of human rights.

Patten recommended that the Oversight Commissioner should be appointed for a term of five years, with a possible extension of this term (para. 19.6). The report recommended that the Commissioner should have perhaps two colleagues, and a small staff in Northern Ireland (para. 19.4). In Patten's words the Commissioner "would provide more than a stocktaking function. The review process would provide an important impetus to the process of transformation"(para. 19.4).

The draft legislation does not provide a statutory basis for the Commissioner's office, despite the statement in the Implementation Plan that the appointment will be given statutory backing in the Bill. According to the Implementation Plan the Oversight Commission is being initially appointed for a period of only three years when the appointment will be reviewed by the Secretary of State. There is no indication of whether colleagues or staff will be appointed.

It is important that the process of change does not lie solely in the hands of those who have managed the current system, *i.e.* the NIO, the Chief Constable and the Police Authority. Efforts must be made to extend the implementation process beyond these bodies and to involve those with an expertise in and commitment to human rights. **The NIHRC recommends that it be closely involved in the implementation process.**

While we would not expect every recommendation in Patten to be included in the legislation, it is of concern to us that so many important issues are covered only in the Implementation Plan which does not have any statutory basis. **The NIHRC recommends that provisions should be inserted into the Bill to govern the role of the Oversight Commissioner and that those provisions should empower the Commissioner to direct change as well as to oversee change.**

The Implementation Plan does not include specific timetables, targets or monitoring tools. While these need to be developed at an early stage, it is important that their development should not be left solely in the hands of the NIO/CC/PANI. Other key organizations, particularly the Oversight Commissioner's office, the Police Ombudsman's office, the NIHRC and the Equality Commission, should be involved.

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