

POLICE REFORM ACT 2002

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 1: Powers of the Secretary of State

Section 1: National Policing Plan

27. This section inserts new section 36A into the 1996 Act. Section 36A requires the Secretary of State to prepare a National Policing Plan by 30 November each year, unless exceptional circumstances – like an autumn general election, or a major incident such as 11 September – prevent this. The Plan will set out the Government’s strategic priorities for the police service over a three-year period. It will include the priorities and requirements which the police service is expected to consider when planning for the coming financial year – the deadline of 30 November for the production of the National Policing Plan is intended to facilitate this. The Plan must set out the Secretary of State’s plans for: issuing Ministerial objectives (under section 37 of the 1996 Act) and the performance targets he intends to set in relation to such objectives (under section 38 of the 1996 Act); setting Best Value performance targets for police authorities (under section 4 of the Local Government Act 1999); making regulations under the 1996 Act as amended, section 97 of the Criminal Justice and Police Act 2001 (regulations as to police training and qualifications) and Part 2 of this Act (complaints and misconduct); issuing guidance under the 1996 Act or Part 2 of this Act; and issuing codes of practice under the 1996 Act and under section 45 of this Act (code of practice relating to chief officers’ powers under Chapter 1 of Part 4). The Plan may also include such other information, plans and advice as the Secretary of State considers relevant. Before issuing the Plan, the Secretary of State must consult those whom he considers represent the interests of police authorities and chief officers of police. Where this formulation occurs in existing legislation, the Secretary of State currently consults the Association of Police Authorities (APA) and ACPO and/or the Chief Police Officers’ Staff Association (CPOSA). The Secretary of State may also consult anyone else he chooses. The consultation process will be undertaken through a non-statutory National Policing Forum, on which both ACPO and the APA are represented, amongst others.

Section 2: Codes of practice for chief officers

28. Section 39A of the 1996 Act (which is inserted by this section) allows the Secretary of State to issue and as necessary revise codes of practice relating to the discharge by chief officers of police of any of their functions. Where the Secretary of State proposes to issue or revise a code of practice he is required to ask the Central Police Training and Development Authority (CPTDA) – an NDPB established under section 87 of the Criminal Justice and Police Act 2001 – to prepare a draft of the code or appropriate revision (*subsection (3)*). In preparing a draft the CPTDA must consult appropriate persons. This will include persons whom it considers represent the interests of police authorities and chief officers of police (*subsection (4)*). It is anticipated, in line with the practice of the Secretary of State where this formulation is used in existing legislation,

that the CPTDA will consult the APA, ACPO and/or CPOSA. The CPTDA may also consult anyone else it chooses. *Subsections (5) and (6)* require the Secretary of State, subject to a sensitivity test, to lay before Parliament all codes of practice issued under this section. The new section complements the existing section 39 of the 1996 Act, which contains a parallel power to issue codes of practice to police authorities.

Section 3: Powers to require inspection and report

29. This section allows the Secretary of State to require an inspection by HMIC of a police force in England and Wales, NCIS or NCS (*subsection (1)*). The requirement may relate to their activities as a whole or only to a particular aspect. Such inspections would be separate from the routine inspections which HMIC carry out in accordance with their existing statutory duty, under section 54 of the 1996 Act, to inspect and report to the Secretary of State on the efficiency and effectiveness of all forces, NCIS and NCS. By virtue of the amendment made to section 55(1) of the 1996 Act, the report of an inspection carried out at the direction of the Secretary of State must be published by him. As a result of this provision, the existing section 40(1) of the 1996 Act is no longer required and is omitted as a result of section 4. *Subsection (2)* makes a parallel amendment to the equivalent Northern Ireland provision.

Section 4: Directions to police authorities

30. This section substitutes a new section 40 of the 1996 Act for the existing one. Section 40 currently enables the Secretary of State to direct a police authority to take specific remedial action following an adverse inspection report by HMIC. New *section 40(1)* broadens the circumstances in which the direction making power may be exercised. First, as it stands the power is exercisable only in response to a specifically commissioned inspection by HMIC; in future the power will be exercisable after either a routine or a special inspection. Second, it is a necessary prerequisite of the existing power that HMIC concludes that the force as a whole is not efficient or effective. Under the new section the trigger will be that the force or a part of it is not efficient or effective either as a whole or in any aspect of its operations (or will become so unless remedial measures are taken).
31. New *section 40(2) to (9)* provide new safeguards against inappropriate use of the powers under this section. The Secretary of State can only specify remedial measures which address existing or approaching inefficiency or ineffectiveness in the whole or any part of the relevant force, as identified in HMIC's report. In addition, the Secretary of State must prepare and submit to Parliament reports on the use of his power under this section (new *section 40(3) and (4)*). The other subsections ensure that the power to give directions is only used as a last resort. New *section 40(5)* places a duty on the Secretary of State to put the evidence that a force or part of a force is failing to the chief officer and police authority and afford them the opportunity to make representations. He will be under a duty to have regard to such representations. New *section 40(5)* further requires the Secretary of State to afford the chief officer or police authority the opportunity to put in place their own remedial measures before they are directed to do so. The intention is that where such remedial measures fully address the area of concern there would be no need for the Secretary of State to issue a formal direction. New *section 40(6) to (9)* allow the Secretary of State to make by regulations further provision for the procedures to be followed. Before doing so, he must consult those whom he considers represent the interests of police authorities (currently the APA), those whom he considers represent the interests of chief officers of police (currently ACPO), and anyone else he sees fit. Regulations made under this section are subject to the affirmative resolution procedure.

Section 5: Directions as to action plans

32. This section amends the 1996 Act by inserting new sections 41A and 41B into that Act. These new sections provide an alternative mechanism to the power to give directions in section 40 of the 1996 Act (as substituted by section 4 of this Act) for the Secretary of

State to intervene to require remedial measures to be taken to address poor performance in a force. The intervention power in new section 41A may be used instead of, or as well as, the power of direction in revised section 40.

33. *Section 41A(1) to (3)* empower the Secretary of State to require a police authority to submit an action plan setting out the remedial measures that the authority proposes to take to address those aspects of the force's performance which has been judged by HMIC to be inefficient or ineffective (or will become so unless such measures are taken). A police authority will have between four and twelve weeks to submit an action plan (*section 41A(10)*). Where so directed by the Secretary of State the police authority must, in turn, direct the chief officer to prepare a draft of the action plan (*section 41A(4)*). The police authority may submit the action plan to the Secretary of State with or without modifications, but where the authority proposes to make changes to the draft of the plan prepared by the chief officer it must first consult him about the proposed modifications (*section 41A(5) and (6)*). It is open to the Secretary of State to comment on the action plan submitted to him where he considers that the remedial measures contained therein are inadequate (*section 41A(7)*). The police authority must consider the Secretary of State's comments but it is a matter for them, in consultation with the chief officer, whether to amend the action plan (*section 41A(8)*).
34. An action plan must set out the steps the police authority proposes to take to address the matters identified in the adverse HMIC report. The direction may require the inclusion of performance targets and timescales for implementation. It may also require periodic progress reports to be sent to the Secretary of State (*section 41A(11)*). *Section 41A(12)* specifically limits the Secretary of State's and police authority's power of direction by providing that they cannot require action in relation to particular cases or individuals.
35. New *section 41B* sets out the same procedural safeguards in relation to the exercise by the Secretary of State of his powers to give directions as to action plans as are contained in revised section 40(3) to (9) regarding directions to police authorities (described in paragraph 31 above).

Section 6: Regulation of equipment

36. This section amends section 53 of the 1996 Act, which regulates the standard of equipment used by police forces. It will allow the Secretary of State to make regulations, which may be used to ensure that all forces use only equipment that has been approved. 'Equipment' will include, for example, vehicles, IT systems, batons, incapacitant sprays, headgear or protective clothing.
37. The section replaces subsections (2) and (3) of section 53 of the 1996 Act with new *subsections (1A) to (2C)*. New *subsection (1A)* enables regulations to be made requiring all police forces to use specified equipment, or equipment, which is of a description specified, or type approved by the Secretary of State. The latter provision builds on existing provisions in road traffic legislation (for example, section 20 of the Road Traffic Offenders Act 1988 and section 11 of the Road Traffic Act 1988) to type approve speed cameras, breathalyser equipment and other equipment used to enforce road traffic laws. The type approval of equipment may be made subject to conditions as to its use. Regulations may also be made under *subsection (1A)* to require forces to keep available for use specified or type approved equipment. This may be relevant where one force is providing mutual aid to another and it is necessary that officers use the same or comparable equipment. The use of specified equipment or equipment of a specified description may also be prohibited under the regulation-making power. Before making any regulations under section 53 as amended, the Secretary of State must consult those whom he considers represent the interests of police authorities and chief officers of police. Where this formulation occurs in existing legislation, the Secretary of State currently consults the APA and ACPO and/or CPOSA. The Secretary of State may also consult anyone else he chooses (new *subsection (2)*). This replaces the requirement in existing subsections (2) and (3) to consult the Police Information Technology

Organisation in respect of any regulations relating to information technology. By virtue of new *subsection (2B)*, statutory instruments made under the amended section 53 are subject to the negative resolution procedure.

Section 7: Regulation of procedures and practices

38. This section inserts new section 53A in the 1996 Act. It performs a similar function regarding procedures and practices as section 6 does regarding equipment. It is intended to focus on the adoption of common procedures and practices where these are necessary to facilitate joint or co-ordinated operations by two or more forces.
39. New *section 53A(1)* allows the Secretary of State to make regulations that will apply to procedures and practices in all police forces. These regulations can require all chief officers to adopt specific procedures or practices that relate to the way their police officers police the force area or in relation to the way they run their force. Before making any regulations the Secretary of State is required firstly to consult those whom he considers represent the interests of police authorities and chief officers of police. Where this formulation occurs in existing legislation, the Secretary of State currently consults the APA and ACPO and/or CPOSA (new *section 53A(3)*). At this point the APA and ACPO would be commenting on the principle of whether regulations should be made in respect of a given procedure or practice. He must then seek the advice of HM Chief Inspector of Constabulary and the Central Police Training and Development Authority (new *section 53A(2)*). Before giving its advice, the CPTDA must consult those whom it considers represent the interests of police authorities, those whom it considers represent the interests of chief officers of police, and anyone else it sees fit (new *section 53A(5)*). Such consultation would be in respect of the details of the proposed regulations. New sections *53A(6)* and *(7)* specify the circumstances in which the regulation-making power under this section can be used. The Secretary of State must have sought and considered advice from CPTDA; and HMIC and the Secretary of State must both be satisfied (a) that the adoption of the procedure or practice is necessary to facilitate joint or co-ordinated operations by police forces, (b) that regulations are necessary to ensure the procedure or practice is adopted and (c) that the adoption of the procedure or practice is in the national interest. The first regulations made under section 53A are subject to the affirmative resolution procedure; subsequent use of the regulation-making powers is subject to negative resolution procedure (*sections 53A(9)* and *(10)*). This is in line with the recommendation of the House of Lords Select Committee on Delegated Powers and Regulatory Reform (Twelfth Report 7 February 2002 (HL 73)).

Section 8 and Schedule 1: Equivalent provision for NCIS and NCS

40. This section gives effect to Schedule 1 to the Act, which makes provision in relation to NCIS corresponding to that in sections 2, 4 and 5 and in relation to NCS to that in sections 2, 4, 5, 6 and 7.