



Home Office

**Border &
Immigration Agency**

**THE INDEPENDENT POLICE
COMPLAINTS COMMISSION OVERSIGHT
OF BORDER AND IMMIGRATION
AGENCY INCIDENTS AND COMPLAINTS
CONSULTATION PAPER**

July 2007



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FOREWORD BY LIAM BYRNE MP MINISTER OF STATE FOR BORDERS AND IMMIGRATION



We have embarked on an ambitious programme of reform of the Border and Immigration Agency to improve the effectiveness of our immigration system and the enforcement of our laws. Change in three key areas will make a substantial difference to the organisation's performance, reputation and public confidence in the system:

- establishing the Border and Immigration Agency as an executive agency with greater autonomy to deliver effective immigration controls within a policy framework agreed by Ministers;
- the move to a regional structure more responsive to local communities, which will keep communities in touch with how their particular region is performing; and
- the introduction of tougher, independent oversight and accountability to Parliament and the public.

All are important in helping us secure the objectives of the immigration enforcement strategy published in March. The strategy creates an environment in which the Agency and the police work together more closely and flexibly in a strategic partnership to combat immigration crime. Operational activity on the ground will increase and become more effective. Some operations will be carried out jointly with the police. In others, Agency staff will exercise their own powers without the police present. We have invested much effort to raise the professionalism of immigration enforcement staff and to give them the skills and equipment they need to perform their duties safely and effectively.

Our clear preference is that those subject to immigration control should abide by the terms of their admission and comply voluntarily if directed

to leave the country. The unavoidable reality is that in some cases there will be a continuing need for the Agency to exercise police-like powers, such as arrest and search, to uphold our immigration laws. To provide the answer a strong framework for delivery, accountability and independent oversight for the Border and Immigration Agency is needed.

The move towards full agency status, regionalisation and the establishment of a new, independent inspectorate for the Agency, will deliver part of this framework. Independent scrutiny and investigation of serious complaints in specific cases forms another. Extending the remit of the Independent Police Complaints Commission to include immigration enforcement work places the Agency in line with other enforcement agencies such as the Police, HM Revenue and Customs, and the Serious Organised Crime Agency. It offers the public and other stakeholders an assurance that, if things do go wrong, the Agency will be held accountable. I believe that such oversight will also promote the Agency's ability to learn from the complaints that it receives to continually develop better and more effective processes.

We would therefore welcome your views on how we can ensure that we realise the full benefit of our future relationship with the Independent Police Complaints Commission.

A handwritten signature in black ink that reads "Liam Byrne".

Liam Byrne MP
Minister of State for Borders and Immigration

SECTION 1

EXECUTIVE SUMMARY

INTRODUCTION

- 1.1 The Border and Immigration Agency has changed considerably over the last few years, adapting to meet current challenges. As the Immigration and Nationality Directorate (IND), the organisation stepped firmly into the world of law enforcement in 2001 when its officers were arrest trained and began to exercise the power of arrest which it had possessed since 1971 but had not exercised independently of the police. Enforcement officers underwent enhanced training and the capability of the organisation to deal with immigration enforcement issues has developed. In addition to the Agency's key function of maintaining a firm check on people entering the UK through border control, officers now regularly conduct visits in the community to apprehend immigration offenders. Immigration officers and officials across the Agency exercise powers of entry, arrest, search and detention as well as pursuing successful prosecutions for immigration offences. It is this enhanced enforcement capability and more effective use of coercive powers that enabled the organisation to apprehend and remove 18,235 immigration offenders in 2006.
- 1.2 In April 2007, IND became the Border and Immigration Agency and announced a new strategy which includes the further expansion of its enforcement capability, a strategic partnership with the police service and more



robust powers to deal with criminality. The UK Borders Bill proposes a range of new powers for immigration officers working at Border Control points, including the ability to detain subjects on behalf of other agencies.

The increase in enforcement capability and additional powers brings with it the need for an independent oversight of the functions in line with that of other law enforcement agencies.

- 1.3 The current UK Borders Bill provides for the appointment of a Chief Inspector to monitor and report on the efficiency and effectiveness of the Border and Immigration Agency. The proposed remit of the Chief Inspector was subject to full public consultation earlier this year. The focus of the Chief Inspector will be on examining the way in which the Border and Immigration Agency carries out its work; a check on the effectiveness of the immigration system rather than a body for considering complaints in individual cases. The new inspector will be able to consider and draw conclusions about an individual case for the purpose of considering a general issue about the Agency's work, but the legislation directs the Inspector away from investigating individual cases. In the sphere of enforcement, the Government believes that this role, that of investigating serious complaints against Agency staff, should be performed by the Independent Police Complaints Commission (IPCC). The Chief Inspector will develop a close relationship with the IPCC, similar to the relationship between the IPCC and Her Majesty's Inspectorate of Constabulary.

POWERS AND REMIT OF THE IPCC

- 1.4 The IPCC became operational on 1 April 2004. It is a Non-Departmental Public Body, (NDPB), funded by the Home Office, but by law entirely independent of the police, interest groups and political parties and whose decisions on cases are free from government involvement. The IPCC is responsible for overseeing the system for handling complaints

SECTION 1 EXECUTIVE SUMMARY (CONTINUED)

made against police forces in England and Wales and therefore has the requisite skills to oversee the Border and Immigration Agency. Its investigators have the power of a constable in an independent investigation carried out in full by the IPCC and therefore offer the reassurance that the most serious complaints will be dealt with correctly. Their values of justice and respect for human rights, independence, valuing diversity, integrity and openness fit very well with those of the Agency.



- 1.5 The extension to the IPCC jurisdiction is made possible by the Police and Justice Act 2006. Section 41 gives a new power to the Secretary of State to confer functions on the IPCC in relation to the exercise of enforcement functions by immigration officers, and by officials where this relates to immigration and asylum. For the IPCC this was another area of new business having also undertaken to provide an oversight of HM Revenue and Customs and the Serious Organised Crime Agency from April 2006. The IPCC will only deal with

complaints and conduct matters in relation to the Border and Immigration Agency in respect of officers exercising 'police-like powers'. It will not be responsible for the rest of the Agency's complaints structure. Complaints relating to other areas of the Agency will continue to be dealt with through existing processes overseen by the Prison and Probation Ombudsman and the Parliamentary Ombudsman. The IPCC will develop agreements with these bodies to ensure a smooth investigation which crosses into areas where they have jurisdiction.

DIVISION OF RESPONSIBILITY

Parliamentary Ombudsman considers any allegations of maladministration not relating to enforcement

Chief Inspector of the Border and Immigration Agency monitors and reports on efficiency and effectiveness

IPCC considers serious complaints relating to exercise of specified police-like powers

THE CONSULTATION

- 1.6 Comments, opinions and suggestions gathered from this public consultation, will help finalise the detailed content of the proposed Border and Immigration Agency (Complaints and Misconduct) Regulations which will then be laid before Parliament. This consultation paper outlines the exact remit of the IPCC and how in practical terms it will work with the Agency to ensure a speedy and effective conclusion to any matters.

HOW TO RESPOND

- 1.7 It is open to anyone – whether as an individual or representing an organisation – with an interest in this area to respond to this consultation document. Responses and comments on the issues raised in this paper are required by 17 October 2007.

You can e-mail to:
ipccconsultation@homeoffice.gsi.gov.uk

Alternatively you can write to:
IPCC Consultation
Border and Immigration Agency
Concorde Offices
PO Box 99
M90 3WW

- 1.8 Please include your name, a return address and whether you are responding on your own or as part of an organisation. A summary of the responses received will be published by the end of 2007 and will be made available on our website. Should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio, please contact the address above.

RESPONSES: CONFIDENTIALITY AND DISCLAIMER

- 1.9 The information you send us may be passed to colleagues within the Home Office, other government departments or related agencies. Furthermore, information provided in response

to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. Please ensure that your response is marked clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed. The Department will process your personal data in accordance with the DPA – in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

SECTION 2

PROPOSED CONTENT OF THE REGULATIONS

POLICE AND JUSTICE ACT 2006

2.1 The Police and Justice Act 2006 enabled the Secretary of State to confer functions on the IPCC in respect of immigration officers and officials exercising enforcement functions relating to immigration and asylum.

The enforcement functions stated in the Act include:

- Powers of entry
- Powers to search persons or property
- Powers to seize or detain property
- Powers to arrest persons
- Powers to detain persons
- Powers to examine persons or otherwise to obtain information, (including power to take fingerprints or to acquire other personal data), and
- Powers in connection with the removal of persons from the United Kingdom

The subsequent Regulations will set out the precise remit of the IPCC in relation to these specified functions. The proposed content of the Regulations includes the following:

ADDITION TO THE ENFORCEMENT FUNCTIONS

2.2 It is the intention to specify an additional enforcement function to be added to those set out in the Act. This additional function will be in relation to surveillance and associated activity under the Regulation of Investigatory Powers Act 2000. It will enable the IPCC to investigate a matter which occurs whilst officers are carrying out these functions but only if it meets the mandatory referral criteria.

GEOGRAPHICAL EXTENT

2.3 Although the Border and Immigration Agency exercises immigration functions throughout the United Kingdom on a reserved basis, the IPCC remit will be restricted to the exercise of functions in England and Wales only. Any cross border complaints will be dealt with

under agreements with the relevant authorities in Scotland and Northern Ireland. It is not anticipated that many complaints will involve cross border activity but it cannot be ruled out as, for example, detainees are sometimes transported by Border and Immigration Agency staff between England and Scotland. The IPCC will have no jurisdiction over Agency officers operating at juxtaposed controls outside of England and Wales.

WHO CAN MAKE A COMPLAINT TO IPCC

2.4 In order to ensure consistent and comparable procedures are applied in all IPCC cases, it is proposed that the categories of complainant for the Agency should mirror those already established for the IPCC's other jurisdictions, which are:

- A member of the public who claims to have been the subject of the conduct complained about
- Another person who claims to have been adversely affected by the conduct
- A member of the public who claims to have witnessed the conduct
- A person acting on behalf of one of those three groups, for example a member of an organisation who has been given written permission.

PROVISION OF INFORMATION TO THE COMMISSION

2.5 In order to ensure consistent and comparable procedures are applied in all IPCC cases, from whichever jurisdiction, the Regulations will include a provision whereby the IPCC can acquire access to all relevant information pertaining to Border and Immigration Agency matters and the power to demand information. The same provision will be made for the handling of information from the Agency relating to national security as has been made for the IPCC's other jurisdictions.

ACCESS TO BORDER AND IMMIGRATION AGENCY PREMISES BY THE COMMISSION

2.6 In order to ensure consistent and comparable procedures are applied in all IPCC cases, from whichever jurisdiction, the Regulations will include a provision whereby the IPCC has the power to gain access to Agency premises.

MANDATORY REFERRALS TO THE COMMISSION

2.7 The Regulations will specify a number of categories of incident which must be referred to the IPCC. The jurisdiction of the IPCC will be limited to these categories and will be specified in the Regulations as the ‘mandatory referral criteria’ as follows:

- Death or serious injury
- Serious assault
- Serious sexual offences
- Serious corruption – restricted to the enforcement functions specified in the Police and Justice Act 2006
- Criminal offences aggravated by discriminatory behaviour
- Any incident which engages Articles 2 or 3 of the European Convention on Human Rights

Criminal matters which do not fall within these criteria will be referred to the Police unless they are:

- Voluntarily referred to the IPCC by the Border and Immigration Agency
- Called-in by the IPCC
- The result of joint police / immigration activity

VOLUNTARY REFERRALS

2.8 A complaint or conduct matter can be referred to the IPCC voluntarily by the Agency due to:

- a) its gravity, or
- b) its exceptional circumstances

This allows for consistency and comparable procedures in all IPCC cases from whichever jurisdiction.

CALLING IN CASES

2.9 The IPCC may call in any complaint or conduct matter due to its gravity or exceptional circumstances. This allows for consistency and comparable procedures in all IPCC cases from whichever jurisdiction.

INVESTIGATIONS

2.10 To ensure consistency and comparable procedures in all IPCC cases, the types of investigation should mirror those established for other jurisdictions. They are:

- IPCC Independent Investigation
- Police or Border and Immigration Agency investigation managed by the IPCC - direction and control of the investigation lies with the IPCC
- Police or Agency investigation supervised by the IPCC - direction and control of the investigation lies with the Agency or the police
- Police investigation, should there be alleged criminal activity
- Border and Immigration Agency investigation on its own behalf

PROVISION OF PAYMENTS TO THE IPCC

2.11 The Agency accepts there will be resource implications resulting from the extension to the IPCC’s remit. The regulations will include provision for payments to the IPCC. The Regulations will also specify that the IPCC can require a police force to conduct any police investigation and that the Agency will make any required payment directly to that police force.

DISCLOSURE

2.12 The IPCC should have the power to disclose to the complainant or other interested party, any information, subject to a harm test. This allows

SECTION 2

PROPOSED CONTENT OF THE REGULATIONS (CONTINUED)

for consistent and comparable procedures in all IPCC cases from whichever jurisdiction.

APPOINTMENT OF IPCC CHAIRMAN AND COMMISSIONERS

2.13 There will be a working convention that no Commissioner within the IPCC who has any connection with the Border and Immigration Agency or the judicial process that underpins it, will deal with any Agency investigations.

JURISDICTION – BORDER AND IMMIGRATION AGENCY PERSONNEL

2.14 Only immigration officers or officials exercising the powers specified in the Police and Justice Act 2006 (which may include those involved in the chain of command) will be covered by the Regulations. This will include immigration officers and officials working in all parts of the Border and Immigration Agency, except for the detention estate, if they are exercising these powers. The Regulations will not cover those immigration officers or officials working in detention centres as jurisdiction over these groups is held by the Prisons and Probation Ombudsman (PPO). The PPO will deal with complaints in relation to immigration detention facilities.

COMMENCEMENT DATES

2.15 It was originally envisaged that the IPCC would take responsibility for matters occurring from 1 April 2007. However, a new date of 1 January 2008 has since been proposed to allow for proper consultation. The IPCC will use a retrospective call in power in order to reassure the public that any delay to the intended ‘start date’ will not result in cases occurring after 1 April 2007 being placed outside of the complaints system.

CONDUCT

2.16 In order to ensure consistent and comparable procedures are applied in all IPCC cases,

from whichever jurisdiction, Border and Immigration Agency disciplinary matters will mirror the arrangements already established in other organisations – i.e. a civilian disciplinary model. These arrangements allow the IPCC to recommend, and if necessary direct, that disciplinary proceedings be held to answer specific charges based on the findings of an investigation. They also allow for the IPCC to present evidence to a disciplinary board. They do not allow:

- The IPCC to direct outcomes
- The IPCC to impose sanctions

GUARDIANSHIP FUNCTION

2.17 Guardianship is a function carried out by the IPCC in respect of its other business areas. In its guardianship role the IPCC do not seek a role beyond the complaints and misconduct system. Instead it seeks to achieve the following:

- Setting, monitoring, inspecting and reviewing standards for the operation of the complaints system in relation to the IPCC remit
- Promoting confidence in the complaints system in relation to the IPCC remit
- Ensuring the accessibility of the system in relation to the IPCC remit
- Ensuring that lessons are learned and good practice shared. This does not give the IPCC licence to comment on the general policies or the direction and control of the Border and Immigration Agency

In order to ensure consistent and comparable procedures in all IPCC cases from whichever jurisdiction, the same guardianship powers should be in place for the Agency. However, although the guardianship role will need to extend beyond the mandatory referral criteria, it will not apply to the entire Agency complaints system and will only be related to those matters that fall within the IPCC jurisdiction.

RIGHT OF APPEAL

2.18 Complainants will have the right of appeal to the IPCC against:

- The outcome of supervised investigations where the matter was referred
- The outcome of local Agency investigations where the matter was referred

Complainants will not have the right of appeal to the IPCC against:

- Matters which are resolved locally
- The non-recording of a complaint by the Border and Immigration Agency (In the event that the Agency do not record a complaint included in the mandatory referral criteria, the complainant would not be at a disadvantage as the IPCC could exercise its call in power)

INTERFACE WITH THE ROLE OF THE PARLIAMENTARY OMBUDSMAN

2.19 Matters investigated by the IPCC will not be subject to appeal to the Parliamentary Ombudsman. Matters investigated internally by the Agency may subsequently be referred through an MP to the Parliamentary Ombudsman, not to the IPCC. Matters investigated by the Parliamentary Ombudsman will not be subject to appeal to the IPCC.

REMOVAL OF COMPLAINANTS

2.20 It has been recognised that there may be occasions when the IPCC require the Border and Immigration Agency to delay the removal of a complainant or witness who is required to be interviewed. There is no intention to include this provision within the Regulations but there will be a protocol between the Agency and the IPCC whereby such issues will be dealt with on a case by case basis. Including a provision within the Regulations which would apply to all cases may lead to an abuse of the system by those wishing to delay removal and the numbers of such complaints may hinder an effective complaints mechanism.

ANNEX A

STAKEHOLDER DISTRIBUTION LIST

Administrative Law Bar Association
Advice UK
Advocate General for Scotland
Amnesty International (International Secretariat)
Amnesty International UK
Association of Chief Police Officers
Association of Chief Police Officers Scotland
Association of Muslim Lawyers
Association of Muslim Social Scientists
Association of Regulated Immigration Advisors
Association of Visitors to Immigration Detainees
Asylum Aid
Asylum and Immigration Tribunal
Asylum Link Merseyside
Asylum Rights Campaign
Asylum Welcome
Bail for Immigration Detainees
BAR - UK Board of Airline Representatives
Bar Council of Northern Ireland
Bar Council Equality and Diversity Committee
Barbed Wire Britain – Network to End Refugee & Migrant Detention
Board of Deputies of British Jews
British Agencies for Adoption & Fostering
British Au Pair Agencies Association
British Ports Association
British Red Cross
Camden Community Law Centre
Confederation of British Industry - CBI
Charities Commission
Churches Commission for Racial Justice
Churches Together in Britain and Ireland
Citizens Advice
Citizens Advice Northern Ireland
Citizens Advice Scotland
Civil Court Users' Association
Civil Justice Council
Commission for Racial Equality
Commission for Racial Equality Scotland
Complaints Audit Committee
Council of Sikh Gurdwaras in Birmingham
Council on Tribunals
Court Service
Crown Prosecution Service
Detention Advice Service
Employability Forum
English UK
Ethiopian Community Centre in the UK
Ethnic Minorities Law Centre
General Council of the Bar
General Council of the Bar of Northern Ireland
Greater London Authority - Policy & Partnerships Directorate
Greater Manchester Immigration Aid Unit
Group 4
Gujarat Hindu Society
Hindu Community Centre (Hackney)
HMCIC – Her Majesty's Chief Inspector of Constabulary
HMIC - Her Majesty's Chief Inspectorate of Constabulary
HMCIP - Her Majesty's Chief Inspector of Prisons
Human Rights Commission of Northern Ireland
Human Rights Scotland
Immigration Advisory Service
Immigration Law Practitioners Association
Immigration Service Union
INQUEST
Institute of Legal Executives
Institute of Race Relations
International Bar Association
IPCC - Independent Police Complaints Commission
Jewish Council for Racial Equality
Joint Council for the Welfare of Immigrants
Judicial Appointments Commission
Judicial Policy Directorate
Judicial Studies Board
Justice
Justice Committees of the Scottish Parliament
Law Centre Northern Ireland
Law Centres Federation
Law Reform Committee of the Bar Council
Law Society
Law Society of Northern Ireland
Law Society of Scotland
Legal Action Group
Legal Aid Advisory Committee Northern Ireland
Legal Aid Practitioners Group
Legal Services Commission
Liberty
Local Authorities Coordinators of Regulatory Services LACORS
Local Government Association
London Asylum Seekers Consortium
London Councils
London Detainee Support Group

London Refugee Voice
Lord Chief Justice of England and Wales
Medical Foundation for Care of Victims of Torture
Member of International Bar Ass Partner Cameron
Mckenna Law Firm
MENTER – East of England, Black and Minority
Ethnic Network
Migrant Helpline
Migration Watch UK
Muslim Council of Britain
National Assembly Against Racism
National Coalition of Anti-Deportation Campaigns
North of England Refugee Service
Northern Ireland Assembly
Northern Ireland Council for Ethnic Minorities
Northern Ireland Court Service
Northern Ireland Office
Office of Law Reform Northern Ireland
Office of the Immigration Services Commissioner
Official Solicitor and Public Trustee
Oxfam
Parliamentary and Health Service Ombudsman
Police Complaints Commissioner for Scotland
Police Ombudsman for Northern Ireland
President of the Family Division
Prison and Probation Ombudsman
Prospect
Public and Commercial Services Union
Race Equality Advisory Group
Race Equality Advisory Panel
Refugee Access Project
Refugee Action
Refugee and Asylum Seeking Children's Project
Refugee Children's Consortium
Refugee Council
Refugee Legal Centre
Refugee Studies Centre
Royal Courts of Justice
Scottish Association of Law Centres
Scottish Asylum Seekers Consortium
Scottish Commissioner of the Council on Tribunals
Scottish Council for Voluntary Organisations
Scottish Court Service
Scottish Law Commission
Scottish Legal Aid Board
Scottish Refugee Council
Shelter
Sikh Community and Youth Service

Society of Solicitor Advocates
Solicitors Association of Higher Court Advocates
South London Tamil Welfare Group
The Children's Society
The Legal Complaints Service
Treasury Solicitors Department
TUC – Trades Union Congress
Union of Muslim Organisations
United Nations High Commission for Refugees
Universities UK
Wales International Consortium
Welsh Assembly
Welsh Refugee Council

ANNEX B
CONSULTATION QUESTIONS (CONTINUED)

8a. Do you think the remit of the IPCC in relation to the exercise of enforcement functions by Border and Immigration Agency officers and officials is clearly explained / will be clearly understood?

Yes No Unsure

Please explain the reasons for your response below

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8b. How is this best communicated to your own stakeholders to ensure the remit is clear? Please rate the following options by how effective they would be in communicating this information.

Postal Leaflet	A lot	<input type="checkbox"/>	A little	<input type="checkbox"/>	Not at all	<input type="checkbox"/>	Unsure	<input type="checkbox"/>
Email Leaflet	A lot	<input type="checkbox"/>	A little	<input type="checkbox"/>	Not at all	<input type="checkbox"/>	Unsure	<input type="checkbox"/>
Workshops	A lot	<input type="checkbox"/>	A little	<input type="checkbox"/>	Not at all	<input type="checkbox"/>	Unsure	<input type="checkbox"/>
Presentations	A lot	<input type="checkbox"/>	A little	<input type="checkbox"/>	Not at all	<input type="checkbox"/>	Unsure	<input type="checkbox"/>

8c. Are there any other options that you feel would be effective in communicating this information?
Please give details below and rate effectiveness.

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A lot A little Not at all Unsure

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A lot A little Not at all Unsure

8c. (continued)

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A lot A little Not at all Unsure

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A lot A little Not at all Unsure

ANNEX C

REGULATORY IMPACT ASSESSMENT

TITLE OF PROPOSAL

The introduction of regulations to govern the oversight by the Independent Police Complaints Commission (IPCC) of certain functions of Immigration Officers, in England and Wales

OBJECTIVE

The Police and Justice Act 2006 made provision for the Secretary of State to make regulations conferring functions on the IPCC in relation to the exercise by Immigration Officers and Officials of the Secretary of State of specified enforcement functions.

The proposal is for regulations to be made which set out the exact remit of the IPCC in relation to this work. This measure will ensure there is an independent scrutiny, as requested by ministers, of Border and Immigration Agency Officers exercising 'police like powers'.

BACKGROUND

The Police and Justice Act 2006 specified several enforcement functions which would be within the jurisdiction of the IPCC. The specific functions in relation to enforcement work are:

- Powers of entry
- Powers to search persons or property
- Powers to seize or detain property
- Powers to arrest persons
- Powers to detain persons
- Powers to examine persons or otherwise to obtain information, (including power to take fingerprints or to acquire other personal data), and
- Powers in connection with the removal of persons from the United Kingdom

It is also the intention to include a further enforcement function in the Regulations, which is:

- Power to conduct surveillance and associated activity under RIPA.

Currently, immigration arrest activity is subject to a protocol between the Border and Immigration

Agency 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.

Immigration officers 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 such officers exercising 'police like powers' led to the conclusion that there should be a body with oversight of this activity. This would ensure comprehensive independent oversight of enforcement functions, similar to those that exist 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.

The IPCC has, broadly, four main functions:

Complaints:

To supervise, manage or conduct its own investigations into complaints made about the conduct of persons serving with the police

Conduct:

To supervise, manage or conduct its own investigations into the behaviour of persons serving with the police where there is no complaint made

A death or serious injury matter:

To supervise, manage or conduct its own investigations where a person has died or been seriously injured during or after contact with the Police where that death or serious injury occurred as a result of that contact. This is where there is no question of a conduct matter being raised (without independent oversight the Government would be vulnerable under Article 2 of the ECHR).

Guardianship:

This comprises:

- Establishing and maintaining procedures for cases related to the three functions above
- Setting and improving standards, providing statutory guidance, carrying out inspection of how these procedures operate at a local level
- Promoting confidence in the complaints system
- Improving the accessibility of the system
- Ensuring that lessons are learned and good practice shared

Informal discussions with the IPCC commenced last year. Other non-Police agencies, such as the new Serious Organised Crime Agency (SOCA) and HM Revenue and Customs (HMRC) have already reached agreement for the IPCC to carry out similar functions as are envisaged for the Border and Immigration Agency.

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION

The Parliamentary Ombudsman can carry out independent investigations into complaints about the administrative actions of government departments including the Immigration Service, agencies and some public bodies. They provide a service to the public by undertaking independent investigations into complaints that government departments, a range of other public bodies in the UK, and the NHS in England, have not acted properly or fairly or have provided a poor service. The Ombudsman's powers and responsibilities are set out in an Act of Parliament (the Parliamentary Commissioner Act 1967) which says that complaints must be sent to them through Members of Parliament (MPs).

PURPOSE AND INTENDED EFFECT OF MEASURE

The purpose of these proposals is to enable the IPCC to investigate complaints and conduct matters regarding immigration officers and officials exercising 'police like powers', whether operating independently or on joint operations with police officers. There would also be provision to refer to the IPCC where there has been a death or serious injury, but

no formal complaint. Other types of complaints against officers engaged in the relevant activities, and complaints against Border and Immigration Agency officers more generally will continue to be dealt with, as now by the internal complaints structure, which includes the Complaints and Internal Investigations Team with oversight from the new Border and Immigration Agency Inspectorate.

The aim is to ensure that the IPCC, together with the Border and Immigration Agency Inspectorate and the Parliamentary Ombudsman, provide proportionate and credible external scrutiny of complaints made against Border and Immigration Agency Officers working independently or on joint operations with the Police. This means that the IPCC will have a particular role in areas where the Border and Immigration Agency exercises police-like powers independently of the Police.

These provisions bring Border and Immigration Agency officers exercising 'police like powers' in line with other enforcement bodies such as the police when they are performing similar functions within the community. However, since Border and Immigration Agency activity is not directly analogous to that of a police force, the role of the IPCC will be tailored to fit these different circumstances.

The role of the IPCC will encompass the points set out below:

The Regulations will specify a number of categories of incident which must be referred to the IPCC. They will be listed in the Regulations as the 'mandatory referral criteria' and include:

- Death or serious injury
- Serious assault
- Serious sexual offences
- Serious corruption – restricted to the enforcement functions specified in the Police and Justice Act 2006
- Criminal offences aggravated by discriminatory behaviour
- Any incident which engages Articles 2 or 3 of the European Convention on Human Rights

Criminal matters that don't fall within the criteria will be referred to the Police unless they are:

- Voluntarily referred to the Commission by the Border and Immigration Agency
- Called-in by the Commission
- The result of joint police / immigration activity

Voluntary Referrals - A complaint or conduct matter can be referred to the IPCC voluntarily by the Border and Immigration Agency due to:

- a) its gravity, or
- b) its exceptional circumstances.

Calling in Cases - The IPCC may call in any complaint or conduct matter due to its gravity or exceptional circumstances. Again this allows for consistency and comparable procedures in all IPCC cases regardless of which jurisdiction.

CONSULTATION

We are consulting with a range of stakeholders between 25 July 2007 and 17 October 2007. The results of this consultation will be analysed to inform the content of the regulations.

OPTIONS

1. Do nothing and continue with existing arrangements

This does not reflect an adequate response to a death or serious injury occurring during a Border and Immigration Agency only operation (i.e. without Police assistance). This does not meet the needs of Ministers, the Complaints Audit Committee and other major stakeholders nor does it offer the same levels of accountability.

2. Use the IPCC to deal with complaints and conduct matters relating to enforcement activity where immigration officers and officials are exercising 'police like powers' whilst operating independently or on joint operations with police officers.

This establishes a mechanism for external, independent oversight of serious complaints and misconduct matters. The proposals represent the right level of jurisdiction over high risk areas of the business without being overly bureaucratic. To broaden the scope would be disproportionate for the number and nature of relatively minor complaints the Border and Immigration Agency currently receives.

COSTS AND BENEFITS

There will be additional costs to the IPCC in taking on this work. Discussions are still on-going. However, they will include:

- Set-up costs to include staffing, internal and external communications.

The set-up costs for the period up to January 2007 have been £276,385. Some further expense will be required to prepare for the launch date of 1st January 2008.

- Annual Operating costs

Work is still on-going to produce a business case which will outline these costs. This will be partly based on Border and Immigration Agency historical data regarding the number of complaints received, which appears to be very low.

Costs will also be incurred in developing an investigative capability able to investigate allegations of a criminal nature. Options include:

- developing current internal capabilities
- using existing seconded police officers with relevant skills
- negotiating arrangements with an external police force/s to provide the capability.

There are also cost implications regarding a post incident management system whereby staff would receive welfare and legal advice following an incident and before or during any subsequent investigation interview. Work is still on-going to produce costs for this provision.

EQUITY AND FAIRNESS

This proposal will ensure there is an independent oversight of complaints and conduct of officers engaged in activity using ‘police like powers’.

In view of this it is recommended that the above proposals be approved.

Contact Point

Home Office Enforcement Policy Unit

SMALL FIRMS’ IMPACT TEST

N/A

COMPETITION ASSESSMENT

N/A

ENFORCEMENT AND SANCTIONS

N/A

MONITORING AND REVIEW

These provisions will be subject to yearly internal reviews by the Border and Immigration Agency Inspectorate and the Internal Complaints Units which will be summarised in a report. There will also be a review of these policy proposals within three years of implementation in line with accepted Government practice. A ‘sunset’ clause was considered but as this relates to intended future policy for the Border and Immigration Agency, such a clause was not considered to be appropriate.

SUMMARY AND RECOMMENDATION

It is important to ensure that immigration officers and officials exercising coercive, police-like powers in the community are subject to the same level of independent scrutiny as the police. The IPCC currently fulfils a similar function for the Police as is envisaged for the Border and Immigration Agency and is also doing so for other non-police agencies such as the Serious Organised Crime Agency (SOCA) and HM Revenue and Customs (HMRC). Furthermore it is important that the Border and Immigration Agency is held accountable for its activities when operating within the community and these proposals ensure this higher level of external scrutiny and public accountability.

ANNEX D

CONSULTATION CRITERIA

This consultation follows the Cabinet Office Code of Practice on Consultation - the criteria for which are set below.

THE SIX CONSULTATION CRITERIA

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full code of practice is available at:
www.cabinet-office.gov.uk/regulation/Consultation

CONSULTATION COORDINATOR

If you have any complaints or comments specifically about the consultation process only, you should contact the Home Office consultation co-ordinator Christopher Brain by email at:
Christopher.Brain2@homeoffice.gsi.gov.uk

Alternatively, you may wish to write to:
Christopher Brain
Consultation Co-ordinator
Performance and Delivery Unit
Home Office
3rd Floor Seacole
2 Marsham Street
London
SW1P 4DF

ANNEX E

INITIAL EQUALITY IMPACT ASSESSMENT

JULY 2007

WHAT ARE THE AIMS AND OBJECTIVES OF THE PROPOSED POLICY?

1. The consultation paper, regarding an independent oversight of Border and Immigration Agency complaints and incidents by the Independent Police Complaints Commission (IPCC), seeks views from stakeholders and the public on how this oversight should be implemented. It sets out suggestions for how the IPCC and the Border and Immigration Agency may work together and proposes the precise remit of the IPCC. The aim is to allow for independent scrutiny of complaints and incidents involving immigration officers and officials using ‘police like powers’ in order to ensure their powers are being used appropriately and fairly, taking care to ensure the safety of the public. The proposed regulations will bring the Border and Immigration Agency in line with other enforcement agencies and allow a mechanism for constructive feedback to be introduced which in turn will assist continuous improvement.
2. The consultation process will run from 25 July 2007 to 17 October 2007. We intend to introduce regulations outlining the IPCC remit by the end of 2007.
3. The consultation paper will be available on the Home Office website. Alternative formats will be available on request from the Home office.

WHO WILL THE POLICY EFFECT?

4. The proposals within the consultation paper will potentially affect anyone who has contact with officers from the Border and Immigration Agency carrying out enforcement functions. The introduction of an independent oversight by the IPCC will lead to an improved complaints service and should improve public confidence in the Border and Immigration Agency’s complaints policy. The full race equality impact will review the proposals in detail in advance of any final decision on the regulations.

5. The consultation paper itself will not have an adverse impact on particular groups or nationalities.

IS THERE ANY EVIDENCE THAT OTHER GROUPS EXPERIENCE THE POLICY ISSUES IN A DIFFERENT WAY? HOW CAN I REMOVE BARRIERS TO EQUALITY OF OPPORTUNITY?

6. The proposed regulations which will allow for an independent oversight of Border and Immigration Agency complaints and incidents are fully in line with the Government’s policies to deliver a more effective, efficient and robust immigration service that has the trust of the public. Successful implementation of these regulations will enhance community cohesion.

SUMMARY

7. The consultation paper will have no adverse impact. The full development of the regulations will be accompanied by a full equality impact assessment.

