



Home Office

**Border &  
Immigration Agency**

**THE INDEPENDENT POLICE  
COMPLAINTS COMMISSION  
OVERSIGHT OF BORDER  
AND IMMIGRATION AGENCY  
INCIDENTS AND COMPLAINTS  
POLICY STATEMENT**

February 2008



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## FOREWORD



In March 2007 the Government launched, *Enforcing the rules - A strategy to ensure and enforce compliance with our immigration laws*. This strategy set out what we will do to encourage compliance with the UK's immigration laws and the enforcement action we will take where people break the rules. It outlined new ways of working for enforcement staff in the newly created Border and Immigration Agency<sup>1</sup> with a focus on partnership working with the Police and other agencies.

In line with this strategy, immigration officers and officials now routinely use a number of police-like powers either alone or alongside the police.

With these powers there is an important responsibility on Border and Immigration Agency officers and officials to be accountable for how they exercise them. As with all organisations that use police-like powers there is the potential for serious incidents to occur. Such incidents are comparatively rare; however, it is important that when such incidents do arise they are thoroughly investigated and reported upon. These investigations need to be professionally carried out with a transparent process subject to independent oversight.

The Government invited the Independent Police Complaints Commission (IPCC) to undertake this role in England and Wales. Agreement was reached and subsequently enabling legislation was made by way of section 41 of the Police and Justice Act 2006. This consultation sought feedback on the proposed content of regulations which will be made under powers provided by section 41 to extend the IPCC's remit to certain activities carried out by the Border and Immigration Agency.

We are grateful to everyone who took time to contribute to the consultation and share their views with us. Respondents supported our proposals to expand the remit of the IPCC. A number of respondents sought clarification on some aspects of how the oversight will work in practice and this document seeks to provide this.

The responses received will help to shape the regulations which will extend and define the IPCC's precise remit in relation to specific functions that officials and immigration officers undertake in England and Wales. Parallel but separate arrangements are being developed to ensure independent oversight is put in place for Scotland and Northern Ireland.

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

**Liam Byrne MP**

Minister of State for Borders and Immigration

<sup>1</sup> The Border and Immigration Agency is a new executive agency of the Home Office. The Agency assumes the responsibilities of the Immigration and Nationality Directorate (IND) for managing immigration control in the UK.

## BACKGROUND

The cross-Government Enforcement Strategy, *Enforcing the rules - A strategy to ensure and enforce compliance with our immigration laws*, set out how the Border and Immigration Agency (BIA) encourages compliance with UK immigration law and acts to enforce the rules where people do not comply.

The Government recognises that it is important that BIA officers and officials have the powers they need to meet their objectives but with these powers comes a need for increased accountability. Where BIA officers and officials are exercising police-like powers, with or without police assistance, it is only right that they too should be fully accountable for their actions and subject to investigation under the auspices of the Independent Police Complaints Commission (IPCC).

As other agencies such as the Serious Organised Crime (SOCA) and HM Revenue and Customs (HMRC) have developed and extended their roles, they too have reached agreement for the IPCC to have oversight of aspects of their work in the same ways as is envisaged for the BIA.

The IPCC has, currently, four main functions:

- (a) **Complaints:** To supervise, manage or conduct its own investigations into complaints made about the conduct of persons serving with the police;
- (b) **Conduct:** To supervise, manage or conduct its own investigations into the behaviour of persons serving with the police where there is no complaint made;
- (c) **Death or serious injury matters:** 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; and

(d) **Guardianship:**

- Establishing and maintaining procedures for cases related to (a), (b) and (c) 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.

In order for the IPCC to fulfil a similar independent oversight role for the BIA the Police and Justice Bill was introduced on 25 January 2006 and received Royal Assent on 8 November 2006.

Section 41 of the Police and Justice Act 2006 gave a new power to the Secretary of State to confer, by way of regulations, functions on the Independent Police Complaints Commission which would enable the Commission to investigate complaints and alleged misconduct regarding the exercise of specified functions, in the same way as it currently investigates the police.

The BIA's consultation, *The Independent Police Complaints Commission Oversight of Border and Immigration Agency Incidents and Complaints*, was launched on 26 July 2007 and the consultation ran until 17 October 2007.

A statistical analysis and report on the responses received to the consultation is set out in *The Independent Police Complaints Commission Oversight of Border and Immigration Agency Incidents and Complaints Analysis of Responses*.

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# A NEW AND INDEPENDENT OVERSIGHT – GOVERNMENT’S RESPONSE TO ISSUES RAISED IN THE CONSULTATION

A number of similar themes, issues and concerns came up within the 13 responses received and in subsequent correspondence. These are listed below along with the Government’s response:

## EXTENT OF IPCC REMIT

### 1. Respondents were concerned that the regulations will not cover private contractors’ activity in relation to the BIA’s detention estate and juxtaposed controls.

The BIA is committed to ensuring appropriate scrutiny of private contractors. Detention and escort work is already overseen by the Prisons and Probation Ombudsman (PPO) currently under the jurisdiction of the Parliamentary and Health Service Ombudsman (PHSO). The PPO investigates deaths in detention and also considers complaints where detainees are not content with the response they receive from the BIA or the contractor. Her Majesty’s Inspectorate of Prisons also inspects BIA removal centres. This oversight along with the remit of the PHSO is sufficient oversight and it was never the Government’s intention to extend the remit of the IPCC to this area of the BIA’s work.

The Asylum and Immigration Act 2006 provided for and regulated the work of contractors in searching freight at Border Control. The BIA currently employs French contractors at juxtaposed controls in Calais. The IPCC’s statutory remit does not extend outside England and Wales. However, there is already oversight in this area. The legislation provides for a crown servant to be appointed to monitor the exercise of powers by the contractor, to inspect the way the powers are exercised and to investigate and report to the Secretary of State about any allegations made against the contractor. The role of monitor is currently carried out by HMRC.

The BIA is currently exploring the potential for using contractors more widely through a small number of limited pilots. Once these have been evaluated we will have a clearer picture of any likely extension to the role of contractors in the BIA and will be able to ensure any further legislation on oversight is suitably targeted.

### 2. Some respondents suggested that electronic tagging should be a function covered by the IPCC.

Individuals who are subject to electronic tagging are able to make a complaint about the actions of BIA officers, officials or contractors under existing procedures and will continue to be able to do so. However, tagging is not an activity which requires the use of coercive enforcement powers. Electronic tagging is not therefore an enforcement function listed in the Police and Justice Act 2006 and complaints relating to this activity are not referable to the IPCC.

### 3. Some respondents felt there should be a further mandatory referral category for cases of racism/discrimination and another for serious self harm incidents.

The Government does not believe any additional categories are necessary.

The proposed regulations will require any case resulting in serious injury, involving officers exercising police-like powers to be referred to the IPCC. This includes cases of serious self harm. There does not need to be a complaint for the case to be referred.

The BIA takes any allegation of racism or discrimination extremely seriously and there is already a robust complaints system in place to deal with complaints of this nature.

The IPCC’s remit will cover the most serious incidents and complaints which are those involving:

- 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

Any criminal matters aggravated by discriminatory behaviour will be referred to the IPCC. All other criminal matters which do not fall within these criteria are, and will continue to be, referred to the Police.

**4. Clarification of the role of the Parliamentary and Health Service Ombudsman (PHSO) in relation to BIA enforcement work was requested.**

The Government recognises and welcomes the Parliamentary and Health Service Ombudsman's (PHSO) remit to investigate complaints of unfair or improper action or poor service by the BIA which extends to all areas of the BIA's work, including enforcement activity. The PHSO's remit also includes oversight of complaints handling across the whole agency. The PHSO and IPCC are committed to producing a protocol that will set out how they will work together in relation to oversight of the BIA including procedures for information sharing. There will be no change to the PHSO's remit in relation to the BIA as a result of these proposals.

**5. Respondents sought further information and clarification on what independent oversight there will be of BIA activity in Northern Ireland and Scotland and on how cross-border cases will work in practice.**

Work is ongoing to ensure there is an independent oversight of BIA work in Scotland and Northern Ireland. In Scotland the Government proposes that oversight will be provided by the Procurator Fiscal and the Police Complaints Commissioner for Scotland. In Northern Ireland we are working with the Police Ombudsman for Northern Ireland to establish similar arrangements.

The IPCC will agree a Memorandum of Understanding (MoU) with its counterparts in Northern Ireland and Scotland. The MoUs will formalise how the organisations will work with each other in the event of a joint investigation.

## **SAFEGUARDS FOR COMPLAINANTS**

**6. Some respondents expressed concern that an individual may not have the opportunity to make a complaint before their removal from the United Kingdom and argued that the IPCC should therefore have power to prevent the BIA removing complainants whilst an investigation is underway.**

Whilst it is important that the BIA is accountable for the exercise of its powers it is also important that it is able to remove people from the UK who are not entitled to be here. The Government's Enforcement Strategy makes clear that we will target the most harmful first including foreign national prisoners.

All those detained pending removal are informed verbally and in writing how to make a complaint on admission to a Removal Centre. Complaint forms are freely available and staff are required to assist a detainee if they wish to complain. Boxes for posting written complaints are located throughout Removal Centres if detainees wish to complain without discussing the issue with staff. These boxes are emptied daily by the Border and Immigration Agency representative on site.

The BIA allows a minimum of 72 working hours between giving formal notice to someone to be removed and the actual removal. This gives time for people to make a complaint about any incident up to their removal.

There will be occasions where someone wishes to complain about an incident that takes place immediately prior to removal. The BIA already has procedures in place to consider last minute appeals and applications for judicial review from those due to be removed. These include careful consideration of the facts of the individual case. It makes sense for the BIA to handle IPCC related complaints in the same way and look at complaints on a case by case basis.

A complainant remains free to make a complaint to the IPCC from abroad if they do not make the complaint whilst in the UK.

The IPCC supports the Government's approach to this issue.

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- 7. Respondents suggested that there should be a right to appeal to the IPCC (i.e. a right to notify the IPCC) about a failure by the BIA to record a complaint.**

The BIA is committed to referring all relevant complaints or incidents to the IPCC for investigation. The Government agrees that complainants should be given the additional safeguard of the right to invite the IPCC to look into cases where they register a complaint but a BIA official fails to record the complaint.

- 8. Some respondents stated that they felt complainants should have access to independent doctors.**

The Detention Centre Rules give detainees the right to access an independent medical practitioner.

## **TRAINING AND PROCEDURAL MATTERS**

- 9. Respondents were concerned that the individuals who may seek the IPCC's services will have specific and different needs to the IPCC's current client base and suggested that the IPCC's staff will need different skills when working with these individuals.**

In exercising its current role IPCC staff already deal with a diverse range of people including vulnerable people and foreign nationals and the IPCC has appropriate procedures in place. IPCC staff will receive training on the work of the BIA and the particular needs of its customer group.

A joint IPCC and BIA communication strategy will cover the difficulties that can arise in communicating directly with complainants. This will include plans to reach individuals via stakeholder groups such as immigration advisors, legal representatives and asylum groups. The proposals also ensure that serious incidents will be referred to the IPCC, regardless of whether a complaint is received.

- 10. There was concern expressed that BIA officers or officials involved in an incident may not be identifiable and that this may be particularly the case where staff and contractors were working together.**

BIA officers are clearly identifiable in terms of dress and officers are required to identify themselves to members of the public before exercising any of the powers listed in the Police and Justice Act. In addition to this there are robust management records of all enforcement activity which lists the officers involved. In the event of a complaint or incident these can be accessed to determine who was present. We agree that anyone involved in a complaint or incident should be easily identifiable and we will keep current working practices under review.

- 11. The IPCC is committed to releasing information about its enquiries into the public domain subject to any release causing "harm". Some respondents requested more information about how the harm test will work and also how information pertaining to national security would be handled between the BIA and the IPCC.**

There are already protocols in place between the IPCC and the Police, HMRC and SOCA which govern the handling of sensitive cases including those relating to national security. The intention is to replicate these for the BIA.

The harm test is set out in regulation 12 of the Police (Complaints and Misconduct) Regulations 2004 and includes consideration of the impact a disclosure of information could have on:

- criminal proceedings
- disciplinary matters
- national security, and
- health and safety.

The IPCC and the BIA are discussing the detail of how this test will operate in practice. Trade unions will be consulted as appropriate.

**12. Respondents were concerned about who will make the decision regarding whether a complaint or incident is sufficiently serious enough to be referred to the IPCC under the mandatory referral criteria.**

The BIA has been working with the IPCC for two years and will continue to work closely once the jurisdiction begins. In the early stages of the new arrangements all complaints or incidents that might possibly fall within or close to IPCC's remit will be discussed in detail. This will give both parties assurance that the criteria are being applied consistently and appropriately.

Statutory guidance will be developed during the initial months of the IPCC's extended jurisdiction to further define the levels at which referral must take place. It is expected that this will largely replicate the statutory guidance in place for the Police. Section 22 of the Police Reform Act 2002 allows the IPCC to issue guidance setting out how levels of seriousness must be defined.







