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To: Dermot Gallagher

From: Dáithí O'Ceallaigh

Date: 29 May, 2000

Pages: 1 + 15

Attached please find three documents:

- Police (Northern Ireland) Bill 2000 - Main areas of divergence from Patten Rccommendations (4 pages)
- Police (Northern Ireland) Bill 2000 - Initial Observations (5 pages)
- Implementation Plan for the recommendations of the Patten Report - Some Observations (6 pages)

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Police (Northern Ireland) Bill 2000 - Initial Observations

General concerns

1. The lack of consultation in relation to the detail of the Policing Bill has been marked. The separate publication of the Policing Bill and the Implementation Plan is disappointing as both documents are required in order to fully assess commitment to the Patten recommendations. There has also been a lack of advance notice on the actual appointment of the Oversight Commissioner

Changes from earlier draft

2. A comparison between the original draft and the current Bill shows that the section on the name is the only substantive element changed. All previous references to the 'police service' have been replaced by references to the 'police force'. A new element in Schedule 6 provides that "The body of constables heretofore known as the Royal Ulster Constabulary shall continue in being as the police service". An additional technical change has been made regarding the mechanism for reviewing the operations of the Policing Board (Part IV).

New proposals on Name

3. Two provisions of the Bill now enable the Secretary of State to effect a change in the name of the RUC. Section 69 (3) comes into effect immediately the Bill is enacted and gives power to the Secretary of State to change the name by way of an order at any time thereafter. In exercising this power the Secretary of State must take into account the advice of the Policing Board and have regard to the need to "secure that the membership of the police force is representative of the community in Northern Ireland" (Section 69(4)). The second provision, Section 69 (5), once enacted, ensures that the police service shall be known as 'the Police Service'. However, the introduction of this provision is at the discretion of the Secretary of State (Section 71 (3)). It appears that the Secretary

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of State is not obliged to act in either case, and no deadline is set for the introduction of these provisions.

Consultations with Parties

4. The SDLP (Alex Attwood) and Sinn Féin (Bairbre de Brún) have raised the following main points of concern in relation to the draft Bill:

Badge and Flag

- Both parties are unhappy with the section of the Bill dealing with the badge, which leaves the issue for later decision. The Secretary of State may make regulations prescribing the design of an emblem and regarding its use, in consultation with the Policing Board, the Chief Constable and the Police Association;

- Regarding flags, discretion is allowed to the Secretary of State (in consultation with the Policing Board, the Chief Constable and the Police Association) to make regulations regarding the flying of all flags from all police buildings (not just HQ). Contrary to Patten, this allows for the possibility of the Union flag being flown, although there is no specific mention of the Union flag in the Bill;

- It is a cause of concern that, in the sections on flags and emblems, there is no requirement on the Secretary of State to have regard to the need to "secure that the membership of the police force is representative of the community in Northern Ireland", whereas it is in fact required in the section dealing with naming the force (Section 69 (4));

Powers to initiate Inquiries

- The treatment of the recommendations relating to Reports & Inquiries is far narrower in scope than that envisaged by Patten, with the insertion of a number

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of extra conditions which can be cited by the Chief Constable to prevent an inquiry being initiated, including a catch-all provision relating to the "efficiency and effectiveness" of the police force;

- The SDLP, in particular, are opposed to the provision requiring 12 of the 19 members of the Policing Board to agree to an Inquiry. They are unhappy with the provision which prevents the Board from conducting retrospective inquiries (restrictions have also been placed on the Ombudsman's power to look back). The SDLP is concerned at the dilution of the role of the First and Deputy First Ministers in the appointment of the first Chairman and the independent members of the Policing Board;

Oath

- Both parties were deeply concerned that the proposed new attestation of constables (oath) does not contain the provision prescribed in Patten to accord equal respect to the 'traditions and beliefs' of all individuals;

Oversight Commissioner

- The parties are also concerned that the office of the Oversight Commissioner has not been put on a statutory footing by the Bill, which may undermine the status of the position and his ability to oversee the implementation of change;

Disqualification from Policing Board / DPP membership

- Sinn Féin indicated particular concern about the provision to disqualify persons convicted of a criminal offence from either political or independent membership of the Policing Board or of a District Policing Partnership. Furthermore, independent members of a DPP are automatically disqualified from becoming members if they have been convicted of a scheduled offence;

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Recruitment

- Both parties are unhappy with the envisaged application of temporary measures regarding recruitment to the police force for a period of three years, subject to review thereafter (as opposed to the ten years recommended by Patten). Also, in the Bill, it would be possible for the Secretary of State, in consultation with the Chief Constable and the Policing Board, to override the 50 / 50 requirement if the Chief Constable determined that there would not be sufficient recruits at any stage in the process (not as in Patten, where, in this scenario, numbers could be aggregated over a number of years);

- There is no provision for the phasing out of the full time Reserve (the SDLP view is that additional legislation would be required).

Conclusion

5. A change of name is essential if there is to be a new beginning to policing in Northern Ireland. We should, therefore, seek assurances that Section 69 (5) will be brought into effect at the earliest possible opportunity and certainly by the time that the main provisions of the Bill are implemented.

6. The provisions in the Bill dealing with flags and the emblem are unsatisfactory. The language of Section 69 (4) which applies to the issue of the name and which imposes on the Secretary of State the obligation to have regard to the need to "secure that the membership of the police force is representative of the community in Northern Ireland" should equally apply to the provisions relating to flags and emblems.

7. We should impress on the British Government our concern (and that of the two Nationalist parties) at the dilution of Patten's recommendations in relation to key areas, viz. the powers of inquiry of the Policing Board and Ombudsman, the

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oath, recruitment, exclusionary provisions in relation to membership of the Policing Board and the DPPs, and the Oversight Commission (lack of statutory footing).

8. There is a real danger that the Bill, in its present form, will not secure the support of the two Nationalist parties. In such circumstances, it is vital that we secure agreement from the British Government that it will enter into discussions with us on the necessary amendments.

Security Section
Anglo-Irish Division
16 May 2000

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Implementation Plan for the recommendations of the Patten Report
Some Observations

1. Following the publication of the Patten Report in September 1999, the British Government committed itself to the publication of an implementation plan, dealing with each of the recommendations of the Patten Report, as well as legislation to effect the recommendations. The Bill, published on 18 May, showed a considerable divergence from the Patten recommendations in a number of key areas (see analysis of 17 May). The publication of the final version of this Implementation Plan has been held back in the light of current political sensitivities.

2. **The current version of the Patten Implementation Plan is seriously flawed in that it dilutes the intent of the Patten recommendations in a number of important areas, particularly relating to the accountability of the police service, and has severely weakened the deadlines for implementation.**

Background

3. The current version is the third received. The original was significantly amended to take account, *inter alia*, of the Government's views. However, substantial problems remained with the second version, and, in a letter of 5 April, we highlighted weaknesses in the areas of symbols, human rights ethos, and the accountability of the police service. Specific concerns were raised in the following areas:

- Flag and Badge
- Introduction of Codes of Practice for all aspects of the Police Service
- Scope of investigative powers of Ombudsman
- Closure of remaining Holding Centres
- Phasing out of Full-Time Reserve
- Introduction of single command for Special Branch and Crime Branch
- Register of Interests

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- Civilian input to training
- Facilitation of secondments
- Oversight Commissioner

4. In the current implementation plan, account has been taken of our concerns in relation to the register of interests and facilitation of secondments. In all other areas of concern, there has been either no change from the previous version or there has been further dilution.

Analysis of current implementation plan

5. The current version has seriously weakened the (already unsatisfactory) timetabling elements contained in version two. Major changes have also been made to the sections relating to the name of the service and the issue of badge and flags, in line with the Police Bill. Further significant changes relate to the role and powers of the Policing Board, the tripartite relationship (between the Secretary of State, the Chief Constable and the Policing Board), powers of the Ombudsman, Codes of Practice, community policing and the appointment of a human rights lawyer.

Timetabling of implementation

6. As in version two, no time scale is indicated for a start-up to phasing out the **full-time reserve**, nor for actually placing the **Special Branch and Crime Branch** under the command of one Assistant Chief Constable. The closure of the **Gough Barracks and Strand Road** holding centres is contingent on alternative arrangements, and will not take place before 2001.

7. There is a pattern of slippage of deadlines in the new implementation plan. Deadlines have been postponed on (i) appointment of a Human Rights lawyer (rec. 6), (ii) reduction of size of police service (rec. 105), (iii) severance packages (rec. 106), and (iv) lump sum for retiring officers (rec. 107). Commencement dates have been substituted for completion dates on the introduction of (i) Human rights as part of performance appraisal (rec. 5), (ii) neutral working environment as management responsibility(rec. 156), (iii)

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complaint pattern analysis (rec. 50), (iv) change management plan (rec. 75), and (v) use of appraisal system in promotion and selection (rec. 77). One deadline, relating to the strengthening of financial accountability (rec. 42), has been dropped in its entirety.

8. The implementation plan drops (i) the proposed 3-5 year norm for police postings for service in neighbouring policing teams (rec. 46), (ii) in general (rec. 83) and (iii) in security work (rec. 102). All of the preceding are now subject to a review which will make recommendations on tenure.

9. The net result is a considerable weakening of the implementation plan as a blueprint for the Oversight Commissioner's work in monitoring progress. It will not be possible for the Oversight Commissioner to monitor progress where there are no deadlines for completion of various tasks. This, combined with the Bill's failure to make statutory provision for the Commissioner, substantially reduces the potential impact of the appointment.

Name, Badge and Flag

10. This section has been almost entirely changed to take account of the Bill and statements by the Secretary of State. The implementation plan now states that 'the Government is well aware of the deep concern over the issue of changing the name. The Government believes that ways can be found of preserving the RUC name consistent with fully implementing the reform proposals of the Patten Report.' There is now no mention of the previously established deadline of September 2001 for bringing the new name into effect.

11. The implementation plan states that the power of the Secretary of State to regulate the flying of all flags (clause 50 of the Police Bill) is inclusive of the power to fly the Union flag from all police buildings. This is in direct opposition to Patten recommendation 152, which says: 'The Union flag should no longer be flown from Police buildings'. The new version also makes clear that the British Government does not 'accept that these new arrangements [badge and flags] necessarily need be entirely free of

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association with both traditions providing this is consistent with the principles of the Good Friday Agreement.' Again, this does not accord with the Patten recommendation which stated that the new badge should be 'entirely free from association with the British or Irish states'.

Community Policing

12. Patten recommended that community policing be a core function of the new police service and stressed the need for the service itself to co-operate with the community. The language in the new version of the plan inverts this emphasis by concentrating on the public's responsibility for good relations with the police. For example, in relation to Policing with the community (rec. 44), reference is made to 'the Policing Board's responsibility for making arrangements for obtaining the cooperation of the public with the police in the prevention of crime'. The previous version referred to the Board's responsibility 'for promoting DPPs and local consultative arrangements for securing efficient and effective policing'. In addition, the new version speaks of the Board 'helping to make community policing a reality' as opposed to being given an important role in 'overseeing the development of community partnership policing'.

District Policing Partnerships (DPPs)

13. The recommendation relating to the power of DPPs to raise 3p in pound to purchase additional services is particularly significant for Sinn Féin. In version two it was marked 'for further consideration' (in the light of the Criminal Justice Review's section on Community Safety). The new version states that the recommendation has not been accepted, although it continues to refer to the outcome of the CJR. To avoid further political controversy on this issue, the version two formula should be reverted to.

Tripartite Arrangement

14. The Patten Report recommended that the provisions of the Police (NI) Act 1998 be simplified to make clear the roles of the Secretary of State, the Chief Constable and the Policing Board, but the two documents intended to do this,

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the Bill and the Implementation Plan, fail to do so. In a linked development, the new version of the implementation plan sees an encroachment by the Secretary of State on areas in the remit of the Policing Board in earlier versions (e.g issuing codes of practice). Also, as outlined in the Police Bill, the powers of the Policing Board to initiate inquiries are severely circumscribed. Furthermore, the powers which have now accrued to the SoS are frequently discretionary powers, which he is not obliged in law to exercise. (Even the Police Authority have indicated that they have serious reservations about the provisions for the new Policing Board envisaged in the Bill, saying that the arrangements for initiating inquiries, police planning, and financial control fail to realise the powers envisaged by Patten, and that the new Policing Board might have less power than the current Police Authority.)

Role of the Ombudsman

15. The plan (like the Police Bill) envisages a more restricted role for the Police Ombudsman in relation to inquiries. The new version of the plan also reduces access to records for the Ombudsman. Previously, the Ombudsman was to have had direct access to past reports 'where these are relevant to complaints investigations'. The new version states that the Ombudsman will be given 'such information by the Chief Constable and the Policing Board as may reasonably be required' for the exercise of her functions. The Ombudsman herself has said that she is not satisfied with the provision made for her office and functions in the Policing Bill, and she plans to lobby to have them amended.

Human rights

16. The original version of the implementation plan proposed that new legislation would provide that the general functions of the police service will include upholding and respecting human rights. This has been dropped in the current version (rec 1). The implementation plan does not require Codes of practice for all aspects of the police service, as recommended by Patten (rec. 3). It is also weak on the commitment to a high degree of civilian input into training. The issue of the appointment of a human rights lawyer (rec. 6) is of particular

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concern. The new version announces a 7 month delay in the appointment of the new lawyer (from September 2000 - April 2001), and the lawyer will still only be appointed on a consultancy basis.

Conclusion

17. The new implementation plan, taken in conjunction with the Police Bill, very seriously dilutes the Patten recommendations. Inevitably, the questions of nomenclature and emblems have generated public controversy. However, there is considerable evidence of dilution in important functional areas of the Implementation Plan and this would seem to represent a concerted effort by vested interests in the security establishment to weaken those structures recommended by Patten which were designed to ensure the accountability (both past and present) of the police service.

18. In these circumstances, the publication of the current version of the Plan will, undoubtedly, generate a strongly negative reaction from both the SDLP and Sinn Féin. It is essential that Implementation Plan in its current form should not be published and that the British Government should comprehensively revise it to bring it fully into line with the essential substance of the Patten recommendations.

Security Section
Anglo-Irish Division
23 May 2000

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S's noted & filed

17 MAY 2000

Taoiseach seriously worrying! 2

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Police (Northern Ireland) Bill 2000 - Main areas of divergence from Patten Recommendations

PATTEN RECOMMENDATION	*BILL*
Name	
"While the RUC should not be disbanded, it should henceforth be named the Northern Ireland Police Service"	No definitive change in name. Power ultimately rests with Secretary of State.
Symbols / Badge / Flag	
Service should "adopt new badge and symbols which are entirely free from any association with either the British or Irish states"	Decision referred to SoS, who must consult the Policing Board, Chief Constable and Police Association.
"The Union flag should no longer be flown from police buildings"	Discretion is allowed to the Secretary of State (in consultation with the Policing Board, the Chief Constable and the Police Association) to make regulations regarding the flying of all flags (including the union flag) from all police buildings.
	In the sections on flags and emblems, there is no requirement on the Secretary of State to have regard to the need to "secure that the membership of the police force is representative of the community in Northern Ireland", whereas it is in fact required in the section dealing with naming the force (Section 69 (4))
Human Rights	
Patten recommended new oath to be taken by all officers	Oath only to be taken by new officers
New oath should require officers to 'accord equal respect to all individuals and their traditions and beliefs'	'traditions and beliefs' element omitted from oath
Code of Ethics integrating ECHR to be drawn up	Chief Constable is to draw up code - consultation with Human Rights Commission and approval of Policing Board not necessary

Mrs Gen 18/5/00

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Bad Apples / Retrospective Inquiries	
Patten said bad apples 'should be dealt with'	- Policing Board not empowered to inquire into matters which took place before its own establishment - SoS may regulate to prevent Ombudsman from investigating matters which occurred in the past
Policing Board - General Functions	
Should meet publicly once a month	No duty to meet in public
Role and relationships of SoS and Policing Board should be made clear	Continuing lack of clarity in relation to interlocking role (e.g. on setting of objectives & securing improvement in efficiency and effectiveness)
Policing Board - Composition	
Independent members should be appointed by SoS in consultation with FM/DFM	No obligation to consult FM/DFM on first appointments after restoration of devolution
Direction that independent members should be "representative of the community as a whole"	SoS has discretion whether or not to appoint a political or independent member who has been convicted of a criminal offence
Chairman to be appointed by SoS with *agreement* of FM/DFM	No obligation to get agreement - must only consult
Policing Board - Reports	
Specific & limited grounds on which Chief Constable can refuse to report to Board	Addition of broad exceptions to capacity to call for report: - if matter already under investigation by statutory authority - if report might prejudice administration of justice
Policing Board - Inquiries	
Policing Board should have power to initiate inquiries	Addition of requirement that 12/19 members of policing Board must support vote to carry out inquiry
Limited cases where SoS would have power to stop / not initiate an inquiry where Policing Board had agreed	Addition of sweeping power to stop inquiry in interests of 'efficiency and effectiveness'
Board should be able to ask other agencies to conduct inquiry on its behalf	No capacity to do so without explicit permission of SoS

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Policing Board - Staff	
Patten saw Policing Board acquiring its own expert staff	SoS has power to transfer staff to Policing Board
District Policing Partnerships	
DPPs should monitor police performance	not in Bill
DPPs should be able to raise 3p in the pound for community safety	not in Bill - deferred until decisions are made on CJR (community safety element)
DPPs should meet in public	no requirement in Bill
There should be 4 DPPs in Belfast	not provided for in Bill (as signalled in January statement). However, there is a capacity for a DPP to set up sub-groups to allow for effective consultation with the community
DPPs should be representative of the district in terms of religion, gender, age and cultural background	- A person convicted at any stage of a scheduled offence or sentenced to a term of imprisonment cannot be appointed as an independent member of a DPP - Policing Board and Council have discretion whether or not to appoint a political or independent member who has been convicted of a criminal offence
Reserve	
The future service should not include a full time reserve	No provision for disbandment of full time reserve (provision for its continuation is not put on a temporary footing)
Recruitment	
Where the number of Catholic applicants in any year was too low, it should be possible to aggregate over a number of years	No provision to aggregate - Chief Constable has discretion to override 50/50 requirement if an adequate number of recruits is not available
Quotas should last for at least 10 years to ensure critical mass	Quota will lapse if not renewed after three years
Ombudsman	
Ombudsman should have access to all past reports on the RUC	- SoS can prevent Ombudsman from having the function of investigating complaints in relation to the past

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Hayes Report should be implemented in full	Not carried through in legislation (almost all provisions of Police Act 1998 still stand) and also no provision for necessary secondary legislation
Public Order Policing	
Nine detailed recommendations on PBRs etc. in Report	None of these recommendations is incorporated into legislation (they are, however, covered by the Implementation Plan)
Devolution	
Report explicitly allows for future devolution of policing in a number of recommendations	Limited provision for future devolved Minister for Justice
Oversight Commissioner	
Legal status not mentioned in Patten	Not established in legislation

Security Section
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