

HOUSE OF LORDS

Select Committee on the Constitution

12th Report of Session 2005–06

Police and Justice Bill

Report

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Police and Justice Bill

1. A bill has been introduced into this House to make provision for reforming the governance of the police in England and Wales, to create a new office of Her Majesty's Chief Inspector of Justice, Community Safety and Custody, and other matters relating to criminal justice. We consider that aspects of the bill raise broad questions of principle about principal parts of the constitution. We draw these matters to the attention of the House.

The tripartite relationship

2. The governance of policing rests on a tripartite relationship—between Chief Constables, the Home Secretary and local police authorities. We regard this arrangement as one of constitutional importance. In our scrutiny of the bill, we noted criticisms that the bill changes the balance of the relationship in favour of the Home Secretary. The bill gives the Home Secretary power to intervene in a police force without first receiving an adverse report from an inspectorate (paragraph 26 of schedule 2 to the bill, amending section 40 of the Police Act 1996). The bill also delegates to the Home Secretary powers to make orders governing the composition and function of local police authorities (schedule 2 to the bill). We noted the explanations for these provisions given by Ministers. It will be for the House as a whole to determine whether the changes brought about by the bill are desirable.

HM Chief Inspector of Justice, Community Safety and Custody

3. The office of Her Majesty's Chief Inspector of Justice, Community Safety and Custody, to be created by part 4 of the bill, will be a major new institution in our constitutional arrangements. The Chief Inspector and his or her staff will have responsibility for inspecting and reporting on the courts system (the Crown Court, county courts and magistrates' courts), the criminal justice system (including prisons) and the immigration enforcement system. It is a matter of constitutional importance that the Chief Inspector is, and is demonstrably seen to be, independent of Ministers. This is especially so in relation to prison inspections. Successive HM Chief Inspectors of Prisons (an office that will be abolished by the bill) have established an impressive record of independence and the House should be sensitive to any diminution of that. We note in this context, that clause 30 of the bill provides for ministerial directions to the Chief Inspector, including the requirement that "In exercising any of his functions the Chief Inspector shall have regard to such aspects of government policy as the responsible ministers may direct" (clause 30(3)).¹

Punishment outside the courtroom

4. Clause 15 of the bill enlarges powers relating to "conditional cautions" contained in the Criminal Justice Act 2003. Such cautions are alternatives to prosecution for relatively minor offences. The bill will allow the police and prosecutor to impose a financial penalty and up to 20 hours of unpaid work

¹ The Joint Committee on Human Rights wrote to the Home Secretary to express concerns about this provision on 20 April 2006.

in the community. The financial penalty is a quarter of the maximum fine which could have been imposed by a magistrates' court for the offence or £500, whichever is lower. Conditional cautions may only be imposed if an offender admits his guilt and agrees to the caution being imposed. Nonetheless, the provision is a constitutional novelty. It may be thought to sit uneasily with the principle of the rule of law, an element of which is that it is for independent courts—not the police or the prosecuting authorities—to punish criminal wrong-doing. This much has been enshrined in English constitutional law by the Bill of Rights 1689, which provides that “fines and forfeitures of particular persons before conviction are illegal and void”.

