



HOUSE OF LORDS

Select Committee on the Constitution

8th Report of Session 2012–13

Police (Complaints and Conduct) Bill

Report

Ordered to be printed 30 November 2012 and published 3 December 2012

Published by the Authority of the House of Lords

London: The Stationery Office Limited
£price

HL Paper 80

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Committee staff and legal advisers

The current staff of the committee are Nicolas Besly (clerk), Luke Wilcox (policy analyst) and Hadia Garwell (committee assistant). Professor Richard Rawlings and Professor Adam Tomkins are legal advisers to the committee.

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Police (Complaints and Conduct) Bill

1. The Police (Complaints and Conduct) Bill was published on 22 November 2012. It is to be fast-tracked through both Houses of Parliament.¹
2. The bill strengthens the powers of the Independent Police Complaints Commission (IPCC) in two respects. First, the Secretary of State is empowered to make regulations requiring serving officers to attend for interview when they are a witness in an IPCC investigation.² Should serving officers fail to comply with such a requirement, it is envisaged that they will become the subject of misconduct proceedings.³ Secondly, the IPCC is empowered in exceptional circumstances to investigate a matter that had previously been investigated by its predecessor body, the Police Complaints Authority.⁴
3. These powers are said to be necessary⁵ to enable the IPCC to investigate more fully matters arising from the recently published report of the Hillsborough Independent Panel,⁶ which found that a number of significant failings by the police contributed to the Hillsborough disaster in 1989, in which 96 people died.⁷ We note however that these will be permanent and general powers.
4. In 2009 we published a report on fast-track legislation in which we recommended that, when introducing a bill that is to be fast-tracked, the responsible minister should explain fully why the fast-tracking is necessary. We set out a template of questions to be addressed.⁸ In each instance of fast-track legislation since 2009 our template of questions has been addressed in the explanatory notes accompanying the bill. We are pleased to see this unbroken practice continue in respect of the present bill. Indeed, we note that the explanatory notes accompanying the Police (Complaints and Conduct) Bill give particularly full answers to each of our questions.
5. This is the sixth bill to be fast-tracked since our 2009 report. This bill is qualitatively different from the previous five, and we draw this difference to the attention of the House. The previous five bills were fast-tracked for reasons that can be readily accepted as justifications for fast-tracking

¹ See HC Deb, 22 November 2012, cols 39–40 WS (the Home Secretary, Rt Hon Theresa May MP).

² See clause 1 of the bill, inserting new paragraph 19F into Schedule 3 to the Police Reform Act 2002.

³ See para 36 of the explanatory notes on the bill.

⁴ See clause 2 of the bill, introducing new section 28A into the Police Reform Act 2002.

⁵ See para 13 of the explanatory notes.

⁶ The Hillsborough Independent Panel was established by the Government in January 2010 to oversee the release of, and to report on, documents relating to the Hillsborough disaster. The Panel's report is available at: <http://hillsborough.independent.gov.uk/the-independent-panel/>

⁷ See further, IPCC, *Decision in response to the report of the Hillsborough Independent Panel*, available at: <http://www.ipcc.gov.uk>

⁸ Constitution Committee, 15th report (2008–09): *Fast-track legislation: constitutional implications and safeguards* (HL Paper 116), para 186.

legislation: they were needed to remedy a defect that had suddenly come to light;⁹ or they were perceived to be a necessary response to a court decision;¹⁰ or they were to deal with a genuine emergency.¹¹ This bill fits none of these categories. The limitations in the IPCC's powers that will be dealt with by this bill have not come suddenly to light: on the contrary, the IPCC has been arguing for some time that its powers need to be strengthened.¹²

6. The provisions of the bill merit careful deliberation and scrutiny in Parliament. For example, it may be questioned whether clause 1, as currently drafted, is fit for purpose, not least in the context of the Hillsborough disaster. The provision deals with “serving officers” and not officers who have retired or resigned. Further, it is unclear what would happen if a serving officer attended the interview but did not properly engage.
7. **We accept that the findings of the Hillsborough Independent Panel bring a fresh urgency to solving the problem. However, as a general principle and for future reference, we do not consider that fast-track legislation should be used to address legal issues that have been known about for a long time.** We note that the explanatory notes accompanying the bill state that “the Home Office has had extensive discussions with the IPCC about the additional powers it needs to carry out its functions more effectively, both in connection with the current Hillsborough investigations *and more generally*”.¹³ It may be doubted whether the appropriate result of discussions such as these is fast-track legislation.
8. We further note that a draft of the Police (Complaints and Conduct) Bill was sent on 16 November to the chairman of the Home Affairs Committee. This, no doubt, was because that committee is conducting an ongoing inquiry into the IPCC. If a draft of the bill was available on 16 November, however, that draft should surely also have been sent to Parliament's various legislative scrutiny committees, including us (given our long-standing interest in fast-track legislation). **We recommend that fast-track legislation is made available to Parliament's legislative scrutiny committees at the earliest possible opportunity, even while the legislation remains in draft form.** As a matter of constitutional principle, all possible steps should be taken to enhance Parliament's scrutiny of fast-track legislation.

⁹ As in the Video Recordings Bill 2009–10 and the Mental Health (Approval Functions) Bill 2012–13.

¹⁰ As in the Terrorist Asset-Freezing (Temporary Provisions) Bill 2009–10 and the Police (Detention and Bail) Bill 2010–12.

¹¹ As in the Loans to Ireland Bill 2010–12.

¹² See, for example, its written evidence to the House of Commons Home Affairs Committee, dated June 2012 and published on that committee's webpages. The Home Affairs Committee is currently undertaking an inquiry into the IPCC.

¹³ Para 22 (emphasis added).