

FROM: J M LEGGE
25 January 1996

cc PS/Michael Ancram (B&L) - B
PS/PUS (B&L) - B
PS/Sir David Fell - B
Mr Semple - B
Mr Thomas - B
Mr Blackwell - B
Mr Bell - B
Mr Daniell - B
Mr Shannon - B
Mr Steele - B
Mr Watkins - B
Mr Wood (B&L) - B
Mrs Collins - B
Mr Smyth - B
Mrs Madden
Mr Maccabe - B
Mr Marsh - B
Dr Power - B
Mr Stephens - B
Mr Bramley - B
Mr Sterling - B
Mr P May - B

1. PS/SIR JOHN WHEELER (B&L) - B [See my separate minute of 30/1/96. JW 31/1/96]
2. PS/SECRETARY OF STATE (B&L) - B

POLICING STRUCTURES WHITE PAPER: POLICY REVISIONS

Summary

Before Christmas Ministers agreed, and EDH endorsed, the publication of the Policing Structures White Paper. However, in the face of continuing very strong opposition from Police Authority members (reported in my minutes of 6 and 12 December) to certain aspects of the proposals, it was decided to delay publication to allow reconsideration of the issues raised by PANI.

2. Having re-examined these issues we have concluded that it would be possible to make some changes to the proposals to meet the Authority's concerns without prejudicing the central thrust of our policy. These changes would mainly affect the sections of the draft dealing with PANI's duties (paras 3.6-3.7) and the financial arrangements (paras 4.10-4.15). The proposed amendments are shown in underlined, bold type in the attached copy of the draft.

3. We have also taken the opportunity to look again at the wider political objections that have been raised throughout the

consultation process. To try to meet some of these objections we propose a recasting of the Foreword to bring out more clearly the reasons why the Government is bringing forward these proposals now and underlining that they could be subject to change as a result of political developments; and also to include a new introductory section to the chapter on the community's role in policing (paras 5.1-5.5).

4. A small number of minor editorial changes (not highlighted) have been made for the sake of clarity and accuracy.

5. The timing of the White Paper has now become difficult. Even with the proposed policy changes there is likely to be significant political opposition, particularly from nationalists who wish to see all policing issues reserved for all-party talks. One possibility would be to publish the proposals in consultative form as a Green Paper, but this would delay much needed reforms almost indefinitely and have wider implications for the whole policing reform agenda. There is also a problem over the possible clash of publication with the planned Anglo-Irish summit intended to take decisions on the talks process.

6. This submission seeks Ministers' agreement in principle to publish the White Paper in the form attached, but to delay a final decision on timing until the future of the political process is clearer. We do not believe further EDH clearance is necessary since officials in the two key departments (Home Office and Treasury) are content, but it would still be appropriate to inform EDH and NI colleagues of the changes by circulating the revised draft before publication.

PANI Objections

7. The Police Authority Members had two principal concerns:

- (i) the retention of PANI's statutory duty "to secure the maintenance of an efficient and effective police service"
- (ii) the retention of PANI's role in finance.

8. These two concerns are closely interlinked. If responsibility for the day to day management of resources is transferred, as we propose, to the Chief Constable, then it is difficult to argue logically that the Authority can have sole responsibility - as they wish - for securing an "efficient and effective" force. In our view the other two partners in the tripartite structure must also contribute to this aim. However, our case is made more difficult to sustain by the fact that not only was the Authority given this responsibility in the 1970 Police (NI) Act, but it is also contained in the 1994 Police and Magistrates Courts Act. A major justification for many of our proposals is to replicate the arrangements for England and Wales contained in the 1994 Act. Our reluctance to concede on this point has been driven largely by the fear that, once given this responsibility, PANI would argue that they could only exercise it properly by retaining full control over policing resources. If we can resolve the financial arrangements satisfactorily, there would be no reason to resist on this issue. The change could be made by some simple textual changes to paras 3.6 and 3.7 (and to Annex B).

9. PANI's concerns over their financial role stem from their view that it is essential for the Authority to act as a buffer between the political authority (be it the Secretary of State or a Northern Ireland Assembly) and the Chief Constable. Their belief is that this role can only be exercised effectively if they have control of the policing budget; otherwise they are concerned that the political system could use the power of the purse to influence the Chief Constable and hence put his operational independence at risk.

10. The problem is to meet this concern without undermining our intention to give the Chief Constable responsibility for day-to-day management of the budget. This means devising arrangements for PANI to have a role in securing the resources necessary for policing, including approving the breakdown of the Policy Grant across broad areas of expenditure, while still requiring the Authority to delegate detailed management of the budget to the Chief Constable. We believe this can be achieved by means of the system described in paras 4.10-4.15 (and reflected in the table at the end of Chapter 3).

11. Adopting these arrangements would helpfully make PANI more akin to Police Authorities in England and Wales. The Authority would have to be made accountable for the Police Grant to the extent required by their involvement in the financial process: we have discussed the changes with Treasury officials who are content (subject to further consultation over the precise drafting of the legislation). We believe the changes will go a very long way to satisfying the objections of PANI members. The Chief Constable may be less enthusiastic about a change which leaves PANI with some financial role but we believe he will be prepared to live with a system that is close to that in England and Wales and still leaves him with full authority over resource deployment and management.

Political Objections

12. We have also looked again at the wider political objections that have been raised. As far as the Unionists are concerned, their main reservation has been over PANI's financial role (no doubt fuelled by Unionist members on the Authority). If we can satisfy PANI, we should go a long way towards meeting this concern; the close parallel with England and Wales should also be helpful. It is, of course, almost impossible to remove the risk of Unionist suspicions of any proposal emanating from the NIO. Moreover Ken Maginnis, who is likely to be a key figure, while recognising that changes in policing are necessary, may nevertheless allow his reaction to be coloured by emotion rather than fact.

13. The Nationalist concerns are more difficult to deal with. The SDLP have avoided discussing the subject with us, but we have tried to reflect some of the points in their recent paper on policing by restructuring the Foreword to bring out the radical nature of the reform agenda and strengthening the beginning of Chapter 5 to emphasise the importance of community engagement in policing. Much of the White Paper should cause the Nationalists no difficulty; in particular the benefits of a strong Police Authority as a buffer against political control by a future local administration should be welcome. Moreover the White Paper does not address the key issues of the future organisation and size of the RUC, nor the emotive

matters of title, oath, uniform etc. But their central objection, already clearly flagged by the Irish, is that the totality of policing should be reserved for all-party talks and hence that the Government should not put forward any proposals at this stage.

Political Talks and Timing

14. Despite the Irish objections, there is a very strong case for moving ahead with the proposals now. The Government has made it clear for several months that it is intending to come forward with a White Paper. The reform of a basically flawed system is long overdue. Recent media coverage has not been unhelpful. To fail to publish now could well be perceived by Unionists as caving in to Irish/Nationalist pressure. The reform of policing is an evolving process: much of what we propose reflects what is already happening in England and Wales, and we need a sound basis to take forward the reform of the RUC now being addressed in the Fundamental Review and which cannot sensibly be delayed. We have a good prospect of a slot for the Bill in the next session, but we shall need to move ahead quickly to start drafting the necessary legislation. Finally the White Paper makes it clear that on some issues (eg future composition of PANI) the Government has not taken a final view and would welcome comments; on others (eg police complaints) it will be influenced by work still in hand; and most importantly the proposed changes do not preclude the possibility of further reforms to reflect future political negotiations.

15. There nevertheless remains the question of the relationship to all-party talks, which will undoubtedly need to address policing issues. To obtain widespread agreement on future policing arrangements is probably not attainable from the current starting point. There is thus much to be said for initiating proposals for balanced change now, which should help to defuse concerns and clarify the real issues. It is likely, however, that this would lead to an adverse reaction from the Irish/SDLP, not on the substance of the proposals, but because they anticipate all-party talks.

16. Some colleagues have suggested we should try to get round this difficulty by publishing the proposals as a Green Paper, as an aid to discussion of policing in all-party talks when they begin. I would be opposed to this: we do not know when talks will begin, still less when they will end. We published a consultation document almost two years ago, and have discussed our proposals extensively with interested parties. To put out another consultation paper now would delay much needed reforms indefinitely (almost certainly several years); we would lose our Bill slot for the next session and we would put the separate critical reforms which will emerge from the Fundamental Review at serious risk. Finally we could well send a signal that reforms in other areas would be susceptible to similar pressures. I therefore recommend publishing the attached draft at an early opportunity.

17. There is, however, the problem of the precise timing. Once approved, printing etc will require 10 days. We could therefore be ready to publish by mid February. But it will be important to avoid clashing with Anglo-Irish summit which is intended to decide whether all-party talks can begin by the end of February. I therefore recommend that we should go ahead with preparations for publication (setting up printing arrangements, informing EDH and NI colleagues by circulating the revised text, and preparing a detailed handling plan) but leave a final decision on exact timing and the text of the announcement itself until we see how the outcome of the International Body and the possibility of all-party talks develop over the next two or three weeks.

18. Ministers may wish to discuss.

ID 71385

J M LEGGE
Ext 28138

FOUNDATIONS FOR POLICING

FOREWORD BY THE SECRETARY OF STATE FOR NORTHERN IRELAND

THE RT HON SIR PATRICK MAYHEW QC MP

1. This White Paper focuses on reform of the overall legislative structure for policing in Northern Ireland, often called the tripartite structure because it rests on the inter-relationship between the Secretary of State, the Chief Constable and the Police Authority, within which the police service operates. But this structure must be seen in context, and the Paper therefore also outlines some of the other major reforms to policing in Northern Ireland which are currently under way.

2. In all these reforms, the Government seeks to build on the common ground which I believe exists on the sort of police service, founded on fundamental principles of fairness, impartiality, consent, responsiveness, accountability and flexibility, which is needed to meet the community's concerns and priorities. Based on these principles, the Government intends to bring forward legislation to give effect to the reforms proposed in this White Paper. The final detail of the legislation will take account of the major and separate review of Emergency legislation, the review of the police complaints process, and the outcome of the Fundamental Review of policing, all of which are due to report by Summer 1996.

3. The original impetus for reform of the tripartite structure was the need to achieve greater efficiency and effectiveness in policing, together with greater public accountability. However the proposals in this White Paper must also now be considered in the light of the major changes taking place in the political and security environment. Issues of law and order in Northern Ireland are inevitably closely intertwined with the need for political consensus. There is no doubt that discussions on policing will be a

major element of talks leading to a final political accommodation, and some have argued that both the reform of policing structures addressed in this White Paper, and changes in the future role and size of the police force itself, should not be instituted in advance of a general political settlement.

4. However, reform of the police service is an evolutionary process: important positive changes are already taking place. The police service throughout the United Kingdom of which the Royal Ulster Constabulary is an integral part, is currently in the midst of wide-ranging and fundamental reform. The Police and Magistrates' Courts Act, 1994, made sweeping changes in England and Wales, some of which have been extended to Northern Ireland; and the recent Police (Amendment) (NI) Order introduced reforms to police powers, disciplinary procedures, and certain changes to the police complaints system. My consultation document "Policing in the Community", published in March 1994, stimulated a major debate on the future arrangements for policing in Northern Ireland. This debate was given additional dimensions by the ceasefires called by the Provisional IRA and Combined Loyalist Military Command in the Autumn of 1994. The Royal Ulster Constabulary (RUC) is already adapting its operations to the new and changing environment as well as playing a key role in the Fundamental Review of Policing, looking ahead at the shape of policing services in a more peaceful environment. In addition to the major independent reviews of the Police Complaints system and the Emergency legislation announced by the Government, the Police Authority for Northern Ireland (PANI) is conducting the most comprehensive survey ever of community views on policing in Northern Ireland.

5. There is an urgent need to increase community identification with policing and to improve the utilisation of scarce public resources. The proposals set out in this White Paper, which are designed to strengthen the operational independence, impartiality and freedom from partisan political control of the police, and their accountability to a strong, independent and widely representative

CONFIDENTIAL - POLICY

Police Authority, stand on their merits whatever the nature of possible future constitutional arrangements. The Government therefore believes that this is the right time to initiate the significant changes set out in this White Paper. But these changes do not preclude the possibility of further reforms, including any resulting from agreements reached in political negotiations. Indeed, while there remains uncertainty about the longer term political and security environment, both policing structures and the nature of the police service itself must be flexible and capable of further adaptation. For example there would need to be changes, not least in the area of finance, to reflect any agreed institutional arrangements such as the creation of an Assembly with responsibility for areas of public expenditure.

6. Turning to the substance of the proposals, it is clear from the responses to "Policing in the Community", and the debate since, that there are misunderstandings about the scope and intent of the currently planned reforms. Let me set out in essence what these proposals will do. The tripartite structure will continue, as proposed in "Policing in the Community", and as overwhelmingly supported by the responses we received. The operational independence, the impartiality and integrity of the police and their freedom from political control will be maintained. The Police Authority's role will be strengthened, with improved arrangements for ensuring that the views of the community on policing are properly reflected and for holding the Chief Constable to account. The roles of the Secretary of State, Chief Constable and the Authority will be clarified.

7. The Government's purpose in introducing the reforms detailed in this White Paper is to facilitate the provision, of an efficient, effective, professional, impartial and responsive police service accountable to the community through a strong, widely representative and open Police Authority. I hope that these changes will help to

CONFIDENTIAL - POLICY

CONFIDENTIAL - POLICY

foster partnerships between the community, the police and other agencies in tackling problems of crime and disorder and thus make a vital contribution to a stable and peaceful environment for all the citizens of Northern Ireland.

The Rt Hon Sir Patrick Mayhew QC MP
Secretary of State for Northern Ireland

CONFIDENTIAL - POLICY

INDEX

1. Future of Policing in Northern Ireland: An Agenda for Reform
 - The Need for Change
 - The Process of Change
 - The Fundamental Review of Policing - Needs and Expenditure
 - The Key Objective

2. Structures for the Future
 - Current Arrangements - The Problems.
 - The "Policing in the Community" Consultation
 - The Way Ahead.

3. Building a Partnership
 - Guiding Principles
 - Duties of Police Officers
 - Defining Responsibilities
 - The Accountability Framework

4. The Partnership at Work
 - Objective Setting.
 - Policing Plans.
 - Resourcing the Police Service.
 - Performance Review, Audit and Inspection.

5. The Police and the Community: Working Together.

6. Composition and Method of Appointment of the Police Authority for Northern Ireland.

7. Conclusion
 - The Next Steps
 - Policing in Partnership for the 21st Century



ANNEXES

- A An Agenda for the Reform and Evolution of the Police Service
- B Responsibilities of the Partners
- [C Planning Cycle - if not included in text of Chapter 4]