


# Political football

**The Government proposals to set up a Serious and Organised Crime Agency are currently being scrutinised by MPs, and the Federation are lobbying to make sure the concerns of police officers will be heard. Tony Judge reports.**

 The Serious Organised Crime and Police Bill's main purpose is to establish the Serious and Organised Crime Agency, which will absorb the National Crime Squad and the National Criminal Intelligence Service, together with the investigative arms of HM Customs and Excise and the Immigration Service.

The Government says that SOCA will be an intelligence-led organisation. Its core objective will be to reduce the harm caused by organised crime. It will use a variety of strategies, including the investigation and prosecution of criminals involved in serious organised crime, the disruption of supply networks, the confiscation of assets and the taxation of undeclared earnings. It will co-operate closely with the police and other agencies. Its remit will extend throughout the United Kingdom.

The Federation is supportive of the concept of SOCA, but criticise the Government for proposing to differentiate between policing and law enforcement in the way that it proposes SOCA should be established.

Jan Berry, chairman of the Federation, said that it is primarily a crime agency and should be operated by police officers in order to be truly effective.

Mrs Berry also points out that the police essentially combat crime at three different levels: local/community, regional and national/international. These are fundamentally interlinked; from the drug dealer on the street to the multinational rings, police sys-



**The Independence of a police officer could be threatened under SOCA**

tems to tackle them must be integrated, co-ordinated and complementary. With the example of the FBI in America and other such bodies in developed countries before us, she warns against stand-alone enforcement agencies as they encourage competition rather than co-operation.

#### SOCA staff issues

There are 1140 police officers in the National Crime Squad. Each is being interviewed with a view to becoming a SOCA employee. However, The Federation has now advised officers not to accept an offer of employment at the present time as pay and conditions have still not been agreed.

The Federation points out

that, as the Bill stands, officers who are expected to transfer from NCS and NCIS to SOCA will lose their status as Officers of the Crown. They will become employees of SOCA, subject to appointment and dismissal in the manner of general employment law. Although the Government has indicated its intention to bring police officers into line with all other employees, the fact is that it is a constable's status as an Officer of the Crown affords protection from arbitrary dismissal.

The Federation state that a person holding the Office of Constable has to be satisfied, when exercising the powers of a

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constable, that the exercise of the powers is appropriate, and they are personally accountable for such action. However, proposals under the Bill state that the Director General of SOCA will be able to confer the powers of a constable on a member of staff. Such designation can be limited to specific operations, specific powers, and can be time limited. This, Mrs Berry has argued, would lead to a lack of independence and accountability on the part of those exercising the powers. The Federation adds that there is "a clear risk" that placing such powers of designation could lead to a politicisation of the agency.

The Federation argues that the right to remove a person's liberty should be strictly limited to specific individuals in specific circumstances, rather than distributed among persons on a pick and mix basis as circumstances arise.

● See letter to NCS officers on page 15.

### Custody officers

The Bill introduces a new category of designated police staff – staff custody officers – who will replace police sergeants in this crucial role. It also extends the powers of other designated staff introduced by the Police Reform Act 2002 – investigating detention and escort officers. The Government says this is part of its programme to build a "more unified police service" in which police staff will play a full part in strengthening operational effectiveness.

The Federation is totally opposed to these proposals. They point out that it is the custody officer who determines whether an arrested person should be detained in custody or go free. This involves a decision, often at speed and under pressure, first as to whether an arrest is lawful, and secondly, whether there is sufficient evidence to justify detention. This is a decision of the utmost importance and should only be taken by a custody officer who is a police officer.

Experience gained over the twenty years since the Police and Criminal Evidence Act was brought in, demonstrates the value of having police officers as custody offi-



The Federation oppose the civilianisation of the custody sergeant role

cers. The Federation is also strongly against proposals to confer additional powers on a wide variety of individuals in a wide range of circumstances. These include extended police powers to CSOs, and to police staff engaged in custody suites or on escorting prisoners.

● Mick Barker, chairman of the Federation's Sergeants' Central Committee, sets out the full case against civilianising the custody officer's role in this issue of *Police* (page 11).

### Police powers

The Bill outlines new powers

intended to help the police and SOCA to disrupt organised crime groups. These include a power to compel individuals to answer questions or produce documents.

The Bill proposes to put the practice of "Queen's Evidence" on a statutory footing. Case Law provides for reduced sentences for defendants who enter guilty pleas and co-operate with the prosecution of others. The Government says that making these arrangements more transparent through a system of binding agreements, defendants will be encouraged to co-operate and the value of their testimony will be enhanced. In addition, the Bill puts arrangements for protecting witnesses on a statutory basis.

Another provision is for a financial reporting order, which could last for up to 20 years, that may be imposed on lifetime criminals. This will require them to submit regular reports of their income, assets and expenditure.

## A snap shot of issues included in the Serious Organised Crime and Police Bill

### Public order

The Bill extends protection against harassment by animal rights extremists and others of employees of companies and persons in their own homes by closing a loophole in the Protection from Harassment Act.

### Religious hatred

The Bill creates a new offence of incitement to religious hatred, based on the existing offence relating to racial hatred in the Public Order Act 1986. The Federation is in full support of this clause, which has been strongly criticised on the grounds that it interferes with freedom of speech. We note that the law against racial hatred has been in force for some years without such difficulty, and provided the law is clear and enforceable, we see no reason why it should not be introduced.

### Royalty and Parliament

In the light of recent cases of trespassing on Royal properties, and demonstrations inside the House of Commons, the

Government has added clauses to the Bill. These create specific criminal offences of trespass, and powers of arrest to police officers.

The Federation says that current legislation already regulates behaviour in the vicinity of Parliament. We recognise the need to ensure that recent events are not repeated, but we are concerned about enforcing a law based on fashion and appearance.

### Uninsured vehicles

The Bill gives a police officer the power to seize a motor vehicle where the officer has reasonable grounds to believe that it is being used by an uninsured driver. An impounded vehicle will not be released until it has been insured and all prescribed charges are paid.

### Police health and safety

Following the recent case in which the present and former Commissioners were personally prosecuted by the Health and Safety Commission, the Bill

amends the Health and Safety Act so that a prosecution is brought against the office of chief constable, rather than the individual, unless it can be shown that a chief officer consented or connived at an offence.

### Proposed new clauses Handcuffs

The Federation is proposing that a clause be added to the Bill to enable police officers to handcuff suspects at the point of arrest. At present, officers have to make an immediate risk assessment, and on occasions this has put them at grave personal risk. Other jurisdictions allow automatic handcuffing. The new power would allow officers to search a suspect for hidden weapons before removing the handcuffs.

### Special constables

The Federation is proposing an amendment to the Police Act 1996 to allow Special Constables to be members of the Federation if they so desire.

Dear Colleague

**RE: SERIOUS ORGANISED CRIME AGENCY (SOCA)**

I am writing on behalf of the Joint Central Committee to confirm our view that we cannot, at present, recommend that any Federated Rank Member should accept an offer of employment directly with the National Crime Squad (with a view thereafter to being compulsorily transferred to SOCA). In our view members who are currently seconded to NCS or NCIS from their Parent Force, should remain on secondment. I will update you as to the views of the Joint Central Committee as time proceeds.

Whereas we have received confirmation from the Home Office that the Secretary of State has given an undertaking that staff who transfer will "transfer at no detriment", we are far from satisfied that the proposals made to date, and the terms of the SOCA Bill, are such as to make this a reality.

Police members of NCS are currently employed under the Police Regulations 2003 and determinations made thereunder. Their employment may only be terminated on reaching retirement age, on ill health grounds or pursuant to the discipline or efficiency regulations. Such members hold the office of Constable and this secures a material degree of independence in operational matters.

Under the current Bill it is proposed that where a member is employed by NCS (and is not therefore on secondment) and they compulsorily transfer to SOCA, they will

- Be employed as employees of SOCA under a contract of employment
- No longer hold the office of Constable, but
- Be designated such powers as a Constable, Customs Officer or Immigration Officer as the Director General of SOCA may from time to time determine.

Employees under contracts of employment, subject to express provision to the contrary, enjoy significantly less job security than police officers employed under the Police Regulations 2003 and determinations made thereunder. In the absence of an express provision allowing for an employee's employment to be terminated on notice (for whatever reason), we are advised that the court is likely to imply that a contract of employment can be terminated on "reasonable notice" which could be as little as three months. Hence, absent any provision to the contrary, whereas there might be financial implications, we are concerned that following transfer a member's employment could be terminated on as little as three months notice (and otherwise than on grounds of age, ill health retirement or pursuant to either discipline or efficiency procedures).

We are working with your representative to seek appropriate commitments (which will be legally binding) as well as appropriate amendments to the SOCA Bill to address, amongst other things:

- a) Appropriate protection for members to secure that post transfer (if they are to become employees) that their employment cannot be terminated otherwise than on grounds of age, ill health retirement pursuant to discipline/efficiency procedures;
- b) That the discipline/efficiency procedures applicable post transfer should be (so far as possible) in identical terms to those applicable now;
- c) That terms and conditions post transfer may only be capable of amendment by agreement (and a refusal to accept any such amendment should not give grounds for lawful termination of employment).

We are also concerned about the proposal that, post transfer, any subsequent transfer and/or promotion will be conditional on a member agreeing SOCA terms and conditions (no doubt materially different from those terms which will transfer) as a condition of taking up that new position or promotion.

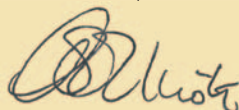
Finally, members who are considering accepting direct employment by NCS should appreciate that current proposals from the Home Office/SOCA do not guarantee that all directly approved police members will transfer. There currently exists the possibility of the employment of such a member being terminated on the transfer. We hope that this issue can be clarified for members to secure that all directly employed police members will transfer.

Insofar as those members who are currently on secondment (and will remain on secondment) their secondment will transfer to SOCA. The terms of the Bill do not, as yet, confirm that they should enjoy the same terms and conditions after transfer as before. We are pressing for an amendment to the Bill to address this issue and are also raising it in correspondence with the Home Office.

It is for the reasons outlined in this letter that the Police Federation cannot recommend you to transfer to direct employment either in NCS or NCIS at this moment in time or to the newly formed SOCA.

I will of course keep you up to date.

Yours sincerely



**Clint Elliott**  
General Secretary