

Regulatory Impact Assessment

Title of Provision

The introduction of oversight by the Independent Police Complaints Commission (IPCC) of certain functions of Immigration Officers (IOs), in England and Wales

The Provisions

The provisions:

- Permit the Secretary of State to make regulations conferring functions on the IPCC in relation to the exercise by Immigration Officers and Officials of the Secretary of State of specified enforcement functions. (A further Regulatory Impact assessment will be submitted to the Cabinet Office Better Regulation Executive for clearance before any additional functions are conferred on the IPCC)
- detail the specific functions intended in relation to enforcement work

Regulations may apply in a similar way to Part 2 of the Police Reform Act 2002 (c.30) and may make provision for payment.

The provisions also allow the disclosure of information between the IPCC and the Parliamentary Commissioner for Administration and any joint investigations where necessary.

The provision shall only apply in England and Wales.

Background

Currently, immigration arrest activity is subject to a Protocol between the Immigration and Nationality Directorate (IND) and the Complaints Audit Committee (CAC). This provides for accelerated handling of complaints and a scrutinising role for the Complaints Audit Committee (CAC). This is not a statutory role and principally it fulfils an audit function.

The Immigration Service is in the process of developing a self-sufficient enforcement capability that can operate without reliance on continuous police support. This includes the development of its arrest capability and is consistent with a number of other measures being taken towards creating a professional, self-sufficient immigration enforcement capability. Immigration officers will carry out operations both in arrest teams (independently of the Police) and with police assistance where necessary.

An internal review of serious complaints related to immigration enforcement activity led to the conclusion that there should be a body with oversight of this activity, including both arrest team operations undertaken independently of the police and those operations with police assistance. This would ensure comprehensive independent oversight of enforcement functions, exactly the same as exists for the police. The Independent Police Complaints Commission (IPCC) is therefore ideally placed for this role.

The IPCC, established under the Police Reform Act 2002, already exists to examine complaints against actions undertaken by police officers using the same or similar powers as Immigration Officers.

The IPCC has, broadly, four main functions:

Complaints. To supervise, manage or conduct its own investigations into complaints made about the conduct of persons serving with the police;

Conduct. To supervise, manage or conduct its own investigations into the behaviour of persons serving with the police where there is no complaint made;

A death or serious injury matter. To supervise, manage or conduct its own investigations where a person has died or been seriously injured during or after contact with the Police where that death or serious injury occurred as a result of that contact. This is where there is no question of a conduct matter being raised (without independent oversight the Government would be vulnerable under Article 2 of the ECHR)

Guardianship. This comprises:

- Establishing and maintaining procedures for cases related to (a), (b) and (c) above;
- Setting and improving standards, providing statutory guidance, carrying out inspection of how these procedures operate at a local level;
- Promoting confidence in the complaints system;
- Improving the accessibility of the system;
- Ensuring that lessons are learned and good practice shared.

Informal discussions with the IPCC commenced last year. Other non-Police agencies, such as the new Single Organised Crime Agency (SOCA) and HM Revenue and Customs (HMRC) have already reached agreement for the IPCC to carry out similar functions as are envisaged for the Immigration Service.

Parliamentary Commissioner for Administration

The Parliamentary Ombudsman can carry out independent investigations into complaints about the administrative actions of government departments including the Immigration Service, agencies and some public bodies. They provide a service to the public by undertaking independent investigations into complaints that government departments, a range of other public bodies in the UK, and the NHS in England, have not acted properly or fairly or have provided a poor service. The Ombudsman's powers and responsibilities are set out in an Act of Parliament (the Parliamentary Commissioner Act 1967) which says that complaints must be sent to them through Members of Parliament (MPs).

Purpose and intended effect of measure

The purpose of these provisions is to enable the IPCC to investigate complaints about the conduct of Immigration Officers and other Officials of the Secretary of State when exercising certain statutory powers. Immigration Officers have a number of statutory powers in relation to criminal offences, which include powers of entry, arrest, search and seizure, with and without warrant. There are also administrative powers of arrest, detention and search, which are solely for immigration purposes and not for criminal investigation.

Extension of the IPCC's remit in England and Wales would cover complaints and conduct matters relating to immigration enforcement activity where IOs are operating within arrest teams, or on joint operations with police officers. There would also be provision to invite in the IPCC where there has been a death or serious injury, but no formal complaint. Other types of complaints against IOs engaged in the relevant activities, and complaints against IOs more generally will continue to be dealt with as now by the Complaints Audit Committee (CAC).

The aim is to ensure that the IPCC, together with the IND Complaints Audit Committee (CAC) and the Parliamentary Ombudsman, provide proportionate and credible external scrutiny of complaints made against Immigration Officials working independently or on joint operations with the Police. This means that the IPCC will have a particular role in areas where IND exercises police-like powers independently of the Police.

These provisions bring the Enforcement and Removals Directorate of the Immigration Service into line with the police when they are performing similar functions within the community. However, since Immigration Service activity is not directly analogous to that of a police force, the role of the IPCC will be tailored to fit these different circumstances.

The role of the IPCC will encompass the points set out below. Any further changes to the above will be the subject of a further regulatory Impact Assessment.

- The CAC will act as a gateway for referrals to the IPCC. All matters relating to Articles 2 and 3 of the European Convention on Human Rights would be referred automatically and without delay. The CAC may refer any other matter to the IPCC where it felt independent scrutiny was required.
- Criminal matters (other than those involving Articles 2 and 3 of ECHR which would be referred to the IPCC), will be referred to the Police unless:
 - ≈ The IPCC themselves call in the Police
 - ≈ The CAC considers it would be more appropriate for the IPCC to look into the matter (Examples are: Where there is evidence of a repeat pattern of incidents or where the incident relates to the most serious allegations i.e. death or serious injury). It must be noted that in these circumstances it does not mean that the Police will not be involved.
 - ≈ Or the matter arises from joint Police and IS activity.
- The IPCC will be able to 'call in' any matter relating to operational enforcement visits where there is a significant public interest.
- The IPCC will not assume any appellate responsibility against refusal to refer or investigate complaints that are not under Articles 2 and 3 of ECHR or called in by the IPCC.
- The CAC will be the gateway for referrals to the IPCC and will refer matters regarding immigration enforcement operations according to specific criteria:

Referral criteria for IND are likely to include:

- ≈ Obligatory referrals for incidents involving death, serious assault and other serious offences; Automatic referral for complaints under Articles 2 and 3 of ECHR.
- ≈ Voluntary referrals by the Complaints Audit Committee (CAC) will be on those cases outside the obligatory categories but where the CAC considers it is appropriate to do so by reason of:
 - (a) its gravity, or
 - (b) its exceptional circumstances
- ≈ Call-in of matters as specified by the IPCC (this may be categories of complaint or specific incidents) where the IPCC considers it is appropriate to do so by reason of:
 - (a) its gravity, or
 - (b) its exceptional circumstances

Options

1. **Do nothing and continue with existing arrangements**
 This does not reflect an adequate response to a death or serious injury occurring during an Immigration Service only operation (i.e. without Police assistance). This does not meet the needs of Ministers, the Complaints Audit Committee and other major stakeholders nor does it offer the same levels of accountability
2. **Use the IPCC to deal with complaints and conduct matters relating to immigration enforcement activity where IOs are operating within arrest teams, or on joint operations with police officers**

This establishes a mechanism for external, independent oversight of complaints relating to death or serious injury. The provisions represent the right level of jurisdiction over high risk areas of the business without being overly bureaucratic. To broaden the scope would be disproportionate for the number and nature of relatively minor complaints the Immigration Service currently receives.

Costs and Benefits

There will be additional costs to the IPCC in taking on this additional work. Discussions are still on-going. However, based on the previous experience of SOCA and HMRC, an initial estimate is as follows:

- Set up costs to include staffing, internal and external communications of approximately £1 m
- Operating costs per year of approximately £500,000

Based on historical data (single figures), the number of complaints to be investigated is likely to be very low.

Equity and fairness

This proposal will help towards ensuring that there is an independent oversight of complaints and conduct of IOs engaged in certain aspects of enforcement and removals activity. It will also set up an appeals procedure for complainants similar to that currently in place for the police.

Small Firms' impact test

N/A

Competition assessment

N/A

Enforcement and sanctions

N/A

Consultation

Within government

Discussions have been held with HM Revenue and Customs

Public consultation

These proposals have been discussed in detail with the IPCC. ACPO and the unions have been kept informed of developments. Responses have been very positive from all key stakeholders (ACPO, IPCC and the IND CAC).

Monitoring and Review

These provisions will be subject to yearly internal reviews by the CAC and the Internal Complaints Units which will be summarised in a report. There will also be a review of these policy proposals within three years of implementation in line with accepted Government practice. A "sunset" clause was considered but as this relates to intended future policy for the Immigration Service, such a clause was not considered to be relevant.

Summary and Recommendation

The Immigration Service is developing an enforcement capability that can operate independently from the Police. It is important to ensure that Immigration Officers exercising coercive, police-like powers in the community are subject to the same level of independent scrutiny as the police. The IPCC currently fulfils a similar function for the Police as is envisaged for the Immigration Service and will also be doing so for other non-police agencies such as the Single Organised Crime Agency (SOCA) and HM Revenue and Customs (HMRC).

Furthermore it is important that the Immigration Service is held accountable for its activities when operating within the community and these proposals ensure this higher level of external scrutiny and public accountability.

In view of this it is recommended that the above proposals be approved.

Contact Point

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