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OFFICIAL REPORT

Ninth Delegated Legislation Committee

THE POLICING PROTOCOL ORDER 2011

Monday 23 January 2012

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The Committee consisted of the following Members:

Chair: MRS LINDA RIORDAN

- | | |
|---|--|
| † Andrew, Stuart (<i>Pudsey</i>) (Con) | McCabe, Steve (<i>Birmingham, Selly Oak</i>) (Lab) |
| † Coffey, Dr Thérèse (<i>Suffolk Coastal</i>) (Con) | † Macleod, Mary (<i>Brentford and Isleworth</i>) (Con) |
| † Crockart, Mike (<i>Edinburgh West</i>) (LD) | † Michael, Alun (<i>Cardiff South and Penarth</i>) (Lab/Co-op) |
| † Duddridge, James (<i>Lord Commissioner of Her Majesty's Treasury</i>) | Paisley, Ian (<i>North Antrim</i>) (DUP) |
| † Gardiner, Barry (<i>Brent North</i>) (Lab) | † Smith, Henry (<i>Crawley</i>) (Con) |
| † Gummer, Ben (<i>Ipswich</i>) (Con) | † Stringer, Graham (<i>Blackley and Broughton</i>) (Lab) |
| † Hanson, Mr David (<i>Delyn</i>) (Lab) | † Stuart, Ms Gisela (<i>Birmingham, Edgbaston</i>) (Lab) |
| † Henderson, Gordon (<i>Sittingbourne and Sheppey</i>) (Con) | † Wilson, Phil (<i>Sedgefield</i>) (Lab) |
| † Herbert, Nick (<i>Minister for Policing and Criminal Justice</i>) | Simon Patrick, <i>Committee Clerk</i> |
| † Huppert, Dr Julian (<i>Cambridge</i>) (LD) | † attended the Committee |

The following also attended, pursuant to Standing Order No. 118(2):

- | | |
|--|--|
| Reckless, Mark (<i>Rochester and Strood</i>) (Con) | Vaz, Keith (<i>Leicester East</i>) (Lab) |
|--|--|

Ninth Delegated Legislation Committee

Monday 23 January 2012

[MRS LINDA RIORDAN *in the Chair*]

The Policing Protocol Order 2011

4.30 pm

The Chair: I call a member of the Home Affairs Committee to move the motion.

Alun Michael (Cardiff South and Penarth) (Lab/Co-op): I beg to move,

That the Committee has considered the Policing Protocol Order 2011 (S.I., 2011, No. 2744).

I am privileged to serve under your chairmanship, Mrs Riordan. I am sure that you will be firm but fair and that there will no need for too much disciplinary intervention.

We have present a rather more expert group of hon. Members than is normal for a statutory instrument Committee. We almost have the same expertise as that of a Select Committee, because three members of this Committee are also on the Home Affairs Committee, whose Chairman, my right hon. Friend the Member for Leicester East (Keith Vaz), is also present. I am also pleased to see present the hon. Member for Rochester and Strood (Mark Reckless). The Government Whips seem to have decided against giving him membership of this Committee, but his experience on the Kent police authority means that he has offered a lot of expertise to the deliberations of the Home Affairs Committee. He should not worry that that comment will get him into trouble with the Whips, because it was meant as a joke. [*Laughter.*] It worked there, at least.

The protocol is intended to help the development of relationships between the new police commissioners, who will be appointed in November, and chief constables, and follows on from concerns expressed by the Home Affairs Committee. I should also declare an interest—I do this at every Home Affairs Committee meeting—that my son is the chief executive of the North Wales police authority and that I have indicated my intention to seek nomination for the position of police commissioner in the south Wales police area.

The Lord Commissioner of Her Majesty's Treasury (James Duddridge): Hear, hear!

Alun Michael: That could be interpreted as a vicious attack. [*Laughter.*]

The protocol is useful in clarifying the expectations of Ministers and officials, but most of it is a reiteration of matters set out in legislation. The Home Office's expectations may have been conditioned by the views of the Association of Police Authorities, and that is a good thing. The Minister indicated in a Westminster Hall debate that he had brought the association into discussions about the protocol so that its experience of holding chief constables to account could inform its development.

That, however, does not include the commissioners, who will form the other half of the relationship. The document cannot, therefore, be fully effective in governing the relationship. As I have said, the protocol sets out expectations, but it does not provide other important elements.

It will be important to have a challenging but good relationship between commissioners and chief constables, as well as an arrangement about how to deal with contentious issues and those on the borderline between their responsibilities. Moreover, a sort of "Erskine May" should be developed over time on relationships between police commissioners and chief constables. As experience indicates, guidance is needed on the best ways of dealing with things when they become contentious and more difficult.

The Home Affairs Committee—I am sure that my right hon. Friend the Member for Leicester East will have something to say about this—made a constructive set of suggestions to the Minister about how the protocol should be developed. Some of those points have been taken on board, which is to be welcomed. Other aspects, however, have not been accepted. For instance, there is formal reference to "PCC", and one of our suggestions was that initials were not a good way of identifying police and crime commissioners, not least because it would not be helpful if people thought that they referred to the parochial church council in England. As I said during a Westminster Hall debate, it should not have to take a Welsh Member of Parliament to point that out to MPs representing English constituencies.

There is also a remaining confusion over the situation in London. It may be correct in law to suggest that the person who chairs the police authority in London is a police commissioner, but it is not correct in reality. The Minister put Kit Malthouse on the working group that has been dealing with the protocol but, of course, he is not a directly elected police commissioner. He is a deputy Mayor and he is appointed by the Mayor of London. Therefore, he is an appointed person, not a directly elected person. In some ways, it appears to be a failure of nerve on the part of the Government not to provide the metropolis and the biggest police force in the country with a directly elected police commissioner.

In responding to the debate, I ask the Minister to provide some clarification on a number of issues. One matter is, for example, referred to in paragraph 6, which states:

"This Protocol does not legally bind the Commissioner of the City of London Police or the Common Council of the City of London, which continues to form the police authority for the City of London. However, they are encouraged to abide by the working principles of this Protocol."

If the protocol is not legally binding on them, to what extent is it legally binding on police commissioners and to what extent is it legally binding on chief constables, especially given paragraph 12, which effectively says that nothing changes in respect of the responsibility of chief constables? I am not suggesting that there should be a change in regard to the office of constable, but it is very important for us to be clear about whether elements in the document are legally binding. If so, to what extent are they legally binding and to what extent can that be enforced? Therefore, the legal status of the protocol is of some importance.

I would also be interested to know what the Minister thinks about the ongoing discussions on the other aspects: developing positive relationships, developing a partnership approach to working, developing the relationship with the panel and what I refer to as the sort of “Erskine May” development of best practice. That is inevitably something that will build up. Does the Minister agree that some way of ensuring that best practice is understood and noted by the Home Office, as well as by both chief constables and commissioners, is a good way to proceed?

The protocol makes clear the level at which engagement by the commissioner is relevant and refers to,

“officers above the rank of Chief Superintendent,”

rather than referring to Association of Chief Police Officers ranks. Changes of that sort greatly improve the clarity of the measure and are very much to be welcomed. I certainly do not intend to vote against the protocol because it is good that there should be discussions of this sort and clarity about the expectation of the Home Office. However, it is also important for there to be an indication of the limits on what the protocol actually covers and the way in which it will take effect. Therefore, along with other members of the Select Committee, I thought that it was important that the protocol and the statutory instrument that brings it into force should be debated properly in a Committee of this sort and that we should seek the response of the Minister on the issues that have been raised by the Select Committee.

Given that the hon. Member for Rochester and Strood and my right hon. Friend the Chair of the Select Committee are both present, I will confine my remarks to those points. I am sure that they and the shadow Minister will raise other issues during the debate.

4.39 pm

Dr Julian Huppert (Cambridge) (LD): It is a pleasure to serve under your chairmanship, Mrs Riordan. It is also a pleasure to have the privilege of continuing the debate; the Select Committee has considered these issues on a number of occasions. I am particularly grateful to the hon. Member for Rochester and Strood for the excellent analysis that he has done—I hope that I will not take away everything that he is planning to say before he has the chance to say it.

In general, I very much welcome the protocol. It is very good that we have such a protocol and that we can have a chance to discuss and make clear what we understand are the different roles of the police and crime commissioner, the chief constable and, most importantly—this has not been mentioned much so far—the panel, which has a very important role to play. It is clearly essential that we ensure that the police and crime commissioners do not become detached from their public. The panel’s role in ensuring that there is a relationship with all sections of the community is very important. No police and crime commissioner—not even the right hon. Member for Cardiff South and Penarth, if he is elected—will be able to spend time in every section of the community, to represent every bit of it and to spend time talking to those in all the different areas. It will be a real challenge for any one person to do that. The panel and its role are therefore extremely important.

I hope that the Minister will clarify a little more how he sees the panel working and at what levels. I am interested in two particular aspects of that. Will he

clarify for those who are not familiar with the details of the debates—he will be aware that we have discussed these issues on a number of occasions—in relation to paragraph 24(a) and so forth of the schedule, what the role of the veto is and exactly how he sees that working, so that panel members who might read this debate will know what they can and cannot do under that power?

Similarly, there is an issue, which we have also discussed in the past, in relation to paragraph 26. It states that

“the Chief Constable may be invited to attend alongside the PCC”.

It is extremely important that the panel has an understanding of what the chief constable is saying, as well as what the police and crime commissioner is saying. We do not want a system in which the commissioner just constantly says to the panel, “That’s an operational matter. I can’t tell you anything about it at all.” That would inhibit the panel from being able to do its job. I have a genuine concern about that from my experience on Cambridgeshire county council, where the police authority representative’s stock answer to any question was, “That’s an operational matter.” I want to ensure that the panel is able to do its job. I understand that the Minister is not keen to see the chief constable being required to attend, but perhaps he could say something that would be very clear to any chief constable—that for them to do their best to attend such a meeting would be the obvious, natural thing for them to do. We do not want a situation in which that is not working.

I have one other question before I come on to the final issue that I want to raise—I want to ensure that there is enough time for everyone else to raise issues. It relates to paragraph 12 of the schedule. We all agree that there should not be interference with the office of constable. Although the Minister has commented on this issue in the Home Affairs Committee, perhaps he could repeat what he said about what is meant by the statement in paragraph 12 that

“the office of constable shall not be open to improper political interference.”

That is important because I find when I talk to people about this issue that there is a real concern that the police will be politicised. It is very important that we reassure people that that cannot happen—that we do not have a sense of “proper” political interference that would cause people to have that concern.

That said, there is a question about what the role is for politics in this area and particularly in decisions. I would like to understand how the Minister sees the role of the police and crime commissioner in terms of what they can do. They have power to set the budget; they have power to control budgetary items, but how far does that go?

Let me give the Minister a particular example. This happened very recently in the Cambridgeshire police authority, where, just as at many other authorities, there has been a debate about Tasers. Two councillors in particular—as it happens, they are a Liberal Democrat and a Conservative, Councillor Kevin Wilkins and Councillor Matthew Lee—have been pressing quite hard to understand the council’s policy on Tasers and whether there is a desire to give Tasers to non-firearms officers. That was questioned by the authority, and the chief constable—this is the report that I have had—replied, “I don’t think I need your approval in order to issue

[Dr Julian Huppert]

these Tasers." In fairness, Chief Constable Parr is a very good chief constable. I disagree with him on this particular issue, but generally he does a very good job. I think that he was wrong in that comment and I would be grateful to hear from the Minister whether he believes that it should be essential to have such permission.

The chief constable went on to say that even if the police authority were to decide not to issue—I think that his exact words were

"Would I go against it if every member of the authority said no? Yes, I would."

It strikes me as very alarming that a chief constable would be going against that. My belief is that whether weapons such as Tasers are given to non-firearms officers is a matter of policy. I would be grateful to hear the Minister's view on that, because this will not be the last time that decisions are made. Decisions about exactly which officers should carry them, in exactly what circumstances and whether they should be used in a particular operation are clearly an operational matter. I think that the question whether Tasers should be used like that is very much a policy issue. I know that it has been discussed with the Metropolitan police. The same would be true of water cannon or any other such item. I would be grateful to hear the Minister's comments on that and the other issues I raised on the protocols.

4.45 pm

Keith Vaz (Leicester East) (Lab): It is a huge pleasure to serve under your chairmanship for the first time, Mrs Riordan. I warmly welcome the speeches of my right hon. Friend the Member for Cardiff South and Penarth and the hon. Member for Cambridge, in which they have supported the protocol and raised matters of importance not only to members of the Home Affairs Committee, but to the House as a whole.

My right hon. Friend is right: this is a Committee of experts. As well as the undoubted expertise of not only the Police Minister, but the shadow Minister, who used to be the Police Minister, we also have former proper police officer in the form of the hon. Member for Edinburgh West, a potential police commissioner in the form of my right hon. Friend the Member for Cardiff South and Penarth, and a potential mayor of Birmingham in the form of my hon. Friend the Member for Birmingham, Edgbaston. There is a lot of interest in what will happen in relation to the protocol because some members of this Committee will have to deal with it in reality.

As right hon. and hon. Members know, the Home Affairs Committee has a long-standing interest in the policing protocol—indeed, I think we can claim credit for recommending its being drawn up in the first place. The creation of police and crime commissioners as individuals with powers to set the policing agenda across the country represents one of the most significant changes to how policing in Britain is managed since the 1960s. Our December 2010 report, "Policing: Police and Crime Commissioners", urged the Government to create a memorandum of understanding to set out the relationships between the police, the police and crime commissioners and chief constables. I am pleased that they took our advice, even though, of course, the Minister has changed the name of the document.

This Committee gives Parliament the first opportunity to discuss the draft protocol in detail since its publication in May 2011. When the final version was laid before the House in 2011, members of the Home Affairs Committee prayed against the order, not because we were against the protocol or liked seeing the Minister regularly, but because we felt that it was important to discuss one or two points of concern.

I pay tribute to the hon. Member for Rochester and Strood, who has taken a strong interest in the protocol and was extremely active on the Home Affairs Committee in ensuring that we put a recommendation on it into our report. As r h an hon. Members know, he is due to become a father for the first time in early March, but I would say that the protocol is probably his first child. He was determined that we not only put it in the memorandum, but had a debate, and Members on both sides of the Home Affairs Committee supported him wholeheartedly. He believed, as do we all, that proper parliamentary scrutiny of important proposal is important.

A key concern for the Home Affairs Committee is the operational independence of the police, which is crucial to their basic mission of preventing crime and disorder and an essential safeguard for citizens against politically motivated intrusion into their lives by the police. That principle was set out by Sir Robert Peel nearly 200 years ago and it still applies today. As we know, on 15 November, we will have the first elections of police and crime commissioners. As well as my right hon. Friend the Member for Cardiff South and Penarth, we heard over the weekend that the former Deputy Prime Minister may himself throw his hat into the ring. If people of that quality stand, it will obviously be quite an election. I do not know if my hon. Friend the Member for Blackley and Broughton, who used to be known as "Mr Manchester" when he was leader of the council, will declare his candidacy here today in Committee.

Graham Stringer (Blackley and Broughton) (Lab)
indicated dissent.

Keith Vaz: I think that is a no.

It is vital that the operational independence of the police be maintained and that it not be subject to party political interference. That is crucial and it has at its core the central and successful relationship between the police and crime commissioners and chief constables. The protocol states:

"the office of constable shall not be open to improper political interference."

When the Minister gave evidence to us back in December, he attempted to explain what would count as proper political interference, as opposed to improper political interference, which of course we are all against. On 9 January 2012, in his reply to my letter in which the Committee raised that issue, he kindly said that I would have the opportunity of raising those questions today, so I hope his reply to this debate will contain explanations regarding both the points in my letter to him and the comments he made subsequently.

Back in December, the Minister spoke of the scenario we saw with the election of the Mayor of London. He explained that the different mayoral candidates made various pledges on policing and said that it was entirely proper for the candidates to make pledges about tackling

knife crime or placing officers on public transport, and entirely proper for them to seek to fulfil those pledges once they took office. I think we would all agree with the logic of that, but it would help if he explained in a bit more detail how that might apply to police and crime commissioners.

We can agree that a candidate for police and crime commissioner who pledged to cut knife crime should be able to pursue that pledge when he or she comes to office, but what if a candidate made a different kind of pledge? To take an extreme example, what if a candidate made a pledge not to tackle business crime, but to focus on, say, violent crime? Would it be legitimate for the candidate to pursue that pledge once they were in office? Would it be legitimate for them to interfere in the operational running of the force to minimise the priority given to business crime, therefore disagreeing with the chief constable; or would that count as improper interference? I hope the Minister will give us guidance on that.

The Committee was also concerned about finances. Police and crime commissioners will be in charge of very substantial budgets. In 2010-11, the combined gross revenue expenditure of the police forces in England and Wales was approximately £13.4 billion. There will be reductions to the central Government element of police funding in 2013 and for two years after that, but we are still talking about very large sums of money and it is vital that we know what would happen if there were a dispute about the allocation of such money. The hon. Member for Cambridge mentioned Tasers, and one of the questions the Committee put to the Minister was: what would happen if a police and crime commissioner were to allocate a budget of zero to a particular item or area of policing, for example Tasers or police dogs? Would that mean that the items could not be used by the police force in question? Would it become a Taser-free force? What recourse would the chief constable have in such a situation? Frankly, the protocol does not make that position clear. I was glad to see the Home Secretary publish the "Financial Management Code of Practice" for the police service last Monday, but that does not cover the way in which budgets are allocated. I have yet to receive a satisfactory response from the Minister on the subject, and I look forward to that response when he winds up.

An editorial in *The Guardian* on 9 January said:

"police minister Nick Herbert will stir up enthusiasm for what looks...likely to be the one big constitutional change that the coalition actually achieves".

I do not know whether this Committee is part of that process or where the stirring of enthusiasm begins, but I welcome that commitment—even though it has come from *The Guardian* and not the Minister—to the public knowing more, because the last public survey showed that quite a few people did not know what police and crime commissioners were going to do.

The Select Committee and I are delighted that the Government took our advice to produce the protocol, but I have reservations about some of the definitions. Once the commissioners have been elected, I hope that the Select Committee will return to consider how the protocol is working in practice. The Minister can rest assured that we will do so because we also believe that

this is a major constitutional change. In my view, police and crime commissioners have the potential to be a force for good, but without correct processes being laid out, it might be all too easy for a power struggle to ensue between a chief constable and a police and crime commissioner. That has to be avoided at all costs, which is why clarity in the protocol is vital.

4.55 pm

Mark Reckless (Rochester and Strood) (Con): It is a pleasure to follow the right hon. Member for Leicester East, the Chair of the Home Affairs Committee. He has referred kindly to the protocol as my baby or my first child, but I should say, at the very least, that the Minister—I am not sure whether this is the right phrase—shares its parentage, as well as that of the overall policy. For two years between 2002 and 2004, I worked for the Conservative party's policy unit, largely under the guidance of the Minister of State, Cabinet Office, my right hon. Friend the Member for West Dorset (Mr Letwin), and did a lot of work on developing our policy of elected police commissioners; and it was the Minister for Policing and Criminal Justice who, in a previous incarnation running the think-tank Reform with our hon. Friend the Member for Clacton (Mr Carswell), did an enormous amount of work to explain the significant constitutional change to which the democratisation of policing will lead. He deserves great credit for that. Paragraph 7.1 of the explanatory memorandum demonstrates the radicalism of what is intended. We are

"replacing accountability to Government by means of overly bureaucratic central control with local accountability to the public via a clearly identifiable directly elected individual."

That will be a significant change for the police.

I welcome this debate and the fact that, rather than nodding through the statutory instrument via the negative procedure, we are debating it in Committee. Section 79 of the Police Reform and Social Responsibility Act 2011 states that the protocol will reflect the Secretary of State's view, but I think it will also reflect that of Parliament. It is very welcome that this important document sets out the division of powers between the various actors in the new police landscape, some of whom will have the most extraordinarily powerful mandate as a result of election.

As well as ensuring that the protocol will reflect the view of the Home Secretary and of Parliament, the Minister has secured one other significant success. We are not just giving our view but endorsing agreement between the chief constables and, although not the elected commissioners, who are not yet in place, but the police authorities, which over many years have gone back and forth, with some tension, with chief constables about the division of power. Now we actually have agreement between those two sides of the tripartite, endorsed by the third side, on what those powers are.

The protocol is a clear and significant document. I should like to put on record my appreciation of all sides of the tripartite, particularly the police. Adrian Lee, the chief constable of Northamptonshire, speaking for the Association of Chief Police Officers, has gone a long way and, in some areas, given significant ground; Tim Godwin and the Metropolitan Police Service have also moved a long way. Given the traditional position of

[Mark Reckless]

the chief constable having direction and control, it is significant, as noted in paragraph 8.1 of the explanatory memorandum, that the MPS

"specifically welcomed the clear statement that the elected local policing body would set the strategic direction and objectives of the force".

The protocol follows clearly in the traditions of the 1962 royal commission on policing. The parliamentary legal advisers to the Home Affairs Committee characterised that commission as having

"emphasised the need for impartiality and operational independence of the police in relation to 'quasi-judicial' decisions"—

that is,

"inquiries in regard to suspected offences, the arrest of persons and the decision to prosecute."

However, it distinguished such matters from

"general policies in regard to law enforcement over the area covered by his"—

the chief constable's—

"force, the disposition of his force, the concentration of his resources on any particular type of crime or area"

or policies on "political demonstrations or processions" and "enforcing the traffic laws".

Our legal advisers said that

"the Commission stated that the chief constable should be more keenly held accountable and subject to a degree of political influence"—

proper political influence, of course—

"in relation to these broader policy issues: 'It cannot in our view be said that the duties of the kind that we have described require the complete immunity from external influence that is generally acknowledged to be necessary in regard to the enforcement of the law in particular cases'."

The protocol is therefore foursquare in the tradition dating back to 1962 and long before then of distinguishing between the key matters on which it is essential that the independent constable, or chief constable as it may be, makes the decision, and those general areas of policing policy and priorities where political oversight is proper. The Minister, when he addressed the Select Committee on 20 December, was also very clear. He said:

"What we don't seek is improper interference with policing, which would be a situation in which an elected politician sought to direct a police officer as to whom they should or should not arrest, or whether they should or should not pursue an investigation."

ACPO and the Metropolitan police are no longer attempting to use the judgment from Lord Denning, which was confirmed by our legal advisers to be not binding, but merely an obiter comment, outside the basis of the case. The leading practitioners Richard Clayton QC and Hugh Tomlinson QC state:

"The doctrine is an exorbitant one and its legal foundations are very slight".

It is very welcome that, rather than seeking to avoid political involvement in policy and oversight where that is appropriate, ACPO, the Metropolitan police and the policing side of the debate generally are recognising the proper role for political influence. I think that that reflects the policy more generally.

It is because police authorities were not elected and were half made up of people who were not even councillors that chief constables may well have thought that they represented their area—that they had the link with the

public in that area—and so would be resistant to taking instructions on policy areas from a police authority. As I said, we had the Home Office-driven central control of policing partly because the chief constables did not look to their police authority to set those generally applicable policies and to give them the confidence to carry out the style of policing that they wished. The fact that, through the protocol, a much more defensible and sustainable division of powers has been agreed between the different actors on the policy stage is very welcome.

The general legal position remains, but clearly some of the case law will now be set in a new context. For example, in *R v Director of Public Prosecutions, ex parte Duckenfield*, in 1999, the Court of Appeal stated that

"the Chief Constable is in charge of day to day policing. The police authority has a role in relation to policy or strategy; but this is subject to the overall direction of the Secretary of State."

Clearly, we are moving away from that model. Similarly, in *Hill v Chief Constable of West Yorkshire*, in 1989, the judgment stated that it is for the chief constable

"to decide how available resources should be deployed".

Many chief constables have tried to take that to mean that they can decide exactly what happens to almost all of the budget, and any attempt by the police authority to state its priorities is somehow against the law or goes against the proper judgments on the matter. That is not the case.

To conclude, I will single out an especially welcome element of the protocol: the one that relates to financing and budgeting. When the Minister appeared before the Select Committee on 20 December last year, I asked:

"Minister, could the Mayor or the MPA"—

That is, the Metropolitan Police Authority—

"prevent the potential use of water cannon by refusing to buy them?"

The Minister answered:

"Yes. That is currently the case in relation to the MPA. Effectively, the MPA took that decision a few years ago in relation to Taser deployment."

As my hon. Friend the Member for Cambridge said, many very senior police officers seem to have a misconception of the law in this area, so the fact that, through the protocol, we are able to clarify the extent of budgetary control by elected police commissioners, who of course have a mandate to exercise that control, is very welcome.

Paragraph 16 of the protocol states that the police and crime commissioner

"is the recipient of all funding, including the government grant and precept and other sources of income, related to policing and crime reduction and all funding for a force must come via the PCC. How this money is allocated is a matter for the PCC."

The PCC must consult the chief constable, but ultimately we have elected control—budgets set by people who are accountable through elections to the public. Although the police officer—the chief constable—has those very important constitutional safeguards in quasi-judicial functions, it is quite right and proper that policing policy should be subject to political control and that through that democratisation and localisation of policing, the police should once again be reattached to the public they serve.

5.7 pm

Ms Gisela Stuart (Birmingham, Edgbaston) (Lab): Mrs Riordan, I begin by declaring an interest in that I have said that if Birmingham chooses to have a directly elected mayor, I shall certainly throw my hat in the ring for the Labour nomination. Hence, my questions to the Minister might sound terribly parochial, but what happens in the West Midlands force is important, given that it is the largest police force outside London, and if Birmingham chooses to have a directly elected mayor, there will be some difficulties to which I hope the Minister has given some thought.

There are several areas of concern. I had a discussion with my local police authority about how it thought that the police and crime commissioner would interact with a directly elected mayor for Birmingham. It was put to me in the following way: those on the authority said that, whatever the statutory provisions, they thought that it would be a bit like dealing with a 6'7" gorilla and asking where the gorilla sits. The answer is, "Wherever it wants to." In some ways, a Birmingham mayor would be in a similar position and if the Minister ever looks at a map of the west midlands he will understand that point.

I very much hope that the Government will at some stage conclude that, following a successful referendum in Birmingham and given that 2013 is a fallow year for local council elections in Birmingham, it would be wise to combine police and crime commissioner elections with mayoral elections. In the case of the west midlands, the police and crime commissioner would be very much elected on the back of the Birmingham turnout, because I would expect the turnout in Birmingham for elections for a mayor and a police and crime commissioner to be substantially higher than in the rest of the west midlands.

I have three specific questions. I ask the first one not because I have any ambition in this direction, but because it was put to me. Is it legally possible for the mayor also to be the police and crime commissioner? Are there any provisions in the legislation that would bar that possibility?

Secondly, the protocol refers to London but not to directly elected mayors in other cities. Does the Minister think that the directly elected mayors should be on the police and crime panel, and have a role on it? If so, what is that role?

Thirdly, I have a slightly tricky question. As I understand it, whenever a Home Secretary takes up office, one of their first meetings is with the chief constables. I assume that, in the future, that meeting will not only be with the chief constables but with the police and crime commissioners. Particularly in areas where the political colouring of the police and crime commissioners and the elected mayors may be different, does the Minister think that a Home Secretary would be wise to ignore those elected mayors and not invite them to that meeting?

Paragraph 16 of the schedule is rather curious, and again, I will use the west midlands as an example. With the Bullring centre and the Royal Centre for Defence Medicine, to where our injured soldiers return, Birmingham has significant policing needs in terms of terrorism and national security. They are very different from those of Solihull or parts of the black country, where policing could be quite different. If the police and crime

commissioner has sole control over the budget, how does the Minister think that those tensions will be overcome?

5.10 pm

Mike Crockart (Edinburgh West) (LD): I too welcome the number of Home Affairs Committee members who are present and who have taken such an interest in this issue. We have a strange Venn diagram going on here, whereby some of them were also members of the Committee on the Police Reform and Social Responsibility Bill and other Members here today also served on that Committee.

In that Committee, the concept that was debated most often—without any great benefit, I have to say—was operational independence. Much play was made of bringing in a compact or protocol—a number of other words were used to describe it—to define better what "operational independence" meant. Although I welcome the protocol, I must say that merely mentioning the term "operational independence" over and over does not necessarily, in itself, define it. The term is used 10 times in only eight pages of the protocol, but I am still not entirely sure what constitutes it. Having said that, there is sufficient detail in the protocol to act as a starting point, and all parties are signed up to it, as my hon. Friend the Member for Rochester and Strood said. However, rather like common law, I feel that the protocol will develop over time to reflect more accurately what constitutes proper political intervention, while ensuring that chief constables remain politically independent. In particular, I welcome paragraph 43, which seems to accept that as fact, in that it will be a living document, particularly during the first terms of the first police and crime commissioners.

I will not detain the Committee long on my specific points, but among other things, paragraph 14 states:

"The Panel within each force area is empowered to maintain a regular check and balance on the performance of the PCC in that context."

What constitutes "a regular check"? How regular does the Minister imagine that it will be? Does he think that it will be monthly, quarterly or half-yearly? I would argue that more rather than less regular meetings will be required to hold a police and crime commissioner to account, especially at the beginning. I seek the Minister's assurance that police and crime panels will be funded properly to enable them to perform their role. It would be entirely unacceptable for a police and crime panel to wish to meet monthly, but be prevented from doing so by a lack of allocated funding.

Paragraph 17(k) puts a particular duty on a police and crime commissioner to publish information

"to enable the people who live in the force area to assess the performance of the"

police and crime commissioner. It seems perverse and circular for the police and crime commissioner to decide what information to publish to assess his or her performance. I do not doubt that the right hon. Member for Cardiff South and Penarth would act properly when making such decisions if he were successful in his stated aims, but I would not necessarily believe the same of all potential commissioners.

[Mike Crockart]

My final point is not about the content of the protocol but about its tone. I take issue with paragraph 20, which states:

"A PCC has wider responsibilities than those relating solely to the police force, namely—

(a) a specific responsibility for the delivery of community safety and crime reduction".

I take issue with that statement. My view, given my previous occupation, is that that is fundamentally incorrect, as it suggests that crime reduction is not a matter to be dealt with by the police force but is something extra. When I swore an oath to do all the things I did as a police officer, it was down to the Police (Scotland) Act 1967, and I am sure that there is an English equivalent. The order in which the roles, duties and responsibilities of a police officer are laid out in that Act is interesting, because right at the top, the very first responsibility is, "to guard, patrol and watch so as—

(i) to prevent the commission of offences",

and only then does it go on to talk about what is commonly regarded as a police officer's role: investigating crimes, catching offenders and taking them to court. Going back further than 1967—although I cannot even remember that far back necessarily—to Sir Robert Peel's time, we cannot get much more basic than his nine principles of policing. The first principle is,

"The basic mission for which the police exist is to prevent crime and disorder",

and as if that were not clear enough, he returns to the concept in principle nine, which states:

"The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it."

We cannot be clear enough that the primary and overriding function of the police is to prevent crime; if that is unsuccessful, to reduce crime; and only if that is unsuccessful, to move on to investigating and reporting.

Keith Vaz: I am following the hon. Gentleman's strong and powerful comments. He speaks with huge authority, having served as a police officer. Does he think that once the 43 police and crime commissioners are elected, there is a risk of them all getting together and deciding that they want to renegotiate the protocol, which has obviously been agreed without their being there?

Mike Crockart: That is a serious possibility. The document will hold to account one party out of the four working in concert to deal with crime, so if that party finds that the responsibilities and duties contained in it do not fit with what they are trying to do from day to day, I am sure they will come forward to change that. However, paragraph 43, on the review, covers that, especially where it refers to

"in particular during the first term of office".

That leaves it open to police and crime commissioners to come forward and say, "This really isn't working," or "We need to renegotiate this particular part." I am happy that that review is written into the protocol, because a common acceptance that the police are not engaged in crime reduction or prevention is a dangerous concept to put down in such a document, and I urge that that be dealt with in the first review that comes along.

5.19 pm

Graham Stringer (Blackley and Broughton) (Lab): I come to the Committee with nothing to declare and no special expertise. I am here because the Whip sent me, really. However, I have been around long enough to have had a little experience of protocols and policing in Greater Manchester. Usually, protocols come about after there has been some kind of bust-up and they relate to what really should have happened after different parties have fallen out. For example, something similar happened recently with regard to the advisory committee on drugs: a protocol was drawn up after its advice was not agreed to by the Home Secretary and the chairman resigned.

A protocol such as the one we are discussing contains a lot of words that are all subject to interpretation and to the law. I say that as somebody who once spent £1 million taking a legal matter to the House of Lords to define a particular conjunction. The interpretation of words can be difficult. I have just read paragraph 16 of the protocol and most of it does not seem at all clear—not where the balance of power lies nor what "consultation" means.

Having come to the Committee without any background from the Home Affairs Committee or anything else, I should like to ask a couple of practical questions. Just to give my preference first, if one has to define where the relationship between the commissioner and a chief constable lies, I would prefer it to be a *de minimis* definition, much along the lines suggested by the hon. Member for Edinburgh West, who said that commissioners should not be able to decide who is charged or arrested or about particular details of an operation. However, having said that, I shall ask two questions that will highlight the problem, which is not really defined by this protocol, by mentioning two riots that took place in Greater Manchester. What would the role of the police and crime commissioner have been in Greater Manchester in 2011 and in 1981, had there been police and crime commissioners at that time?

Let us deal first with the 2011 riot in Greater Manchester. I think and have said publicly that, acting with good will, the chief constable made some fundamental errors of judgment. First, just before the riots happened in Salford and Manchester, he sent a good percentage of the specially trained riot police officers to London, where riots had just finished. That was not a good decision, in my opinion. In those circumstances, where would the operational and political responsibility of the commissioner lie? Could the commissioner at that point have said, "I believe"—like virtually everybody else in Manchester and Salford 12 hours before—"that there is going to be a riot on the streets in Salford and Manchester and we need not only every police officer we have from the Greater Manchester force, but police officers from more local, rural forces to help us"? I would like clarification about where such a responsibility lies, because I think—I do not know what the Minister's answer will be—that on that issue, which borders, I will admit, on the operational, responsibility should lie with the commissioner because there is a direct relationship in that regard between the commissioner and the people who needed protection from those riots.

Whatever I think about Chief Constable Fahy's decisions on that night, I have no doubt that he was doing his best. Going back to the 1981 riots in Moss Side in

Greater Manchester, I do not believe that the then chief constable, James Anderton, had the people's best interests at heart. He had allowed discriminatory racist policing to develop and he took a calculated decision to let the riots rip so that he could go in hard at that time and, basically, attack, arrest and damage some of the people in Moss Side. I felt strongly about those two issues on both occasions.

Similar to the 2011 question, if the commissioner had existed in 1981, would he have been able to say to the chief constable at that particular time, "Whatever are you doing waiting for 24 hours before you send in the police when there are riots taking place in Moss Side?" Those riots were allowed to happen undisturbed by the police for 24 hours. Where would the responsibility lie in that situation? Those are difficult questions to ask, but they are important because, unfortunately, we may have riots next year or in 10 or 15 years' time. It is better to be clear on such things before, rather than afterwards. I am not convinced that the wording, which is necessarily ambiguous in the protocol, would define and determine what action the commissioner and the chief constable should take in such situations.

5.25 pm

Mr David Hanson (Delyn) (Lab): I begin by thanking my right hon. Friend the Member for Leicester East (Keith Vaz) and his colleagues on the Home Affairs Committee for praying against the protocol order. We do not plan to vote against the protocol today; in fact, I welcome its development. However, it is incumbent on the Minister to listen to the concerns surrounding the issues, if for no other reason than to place on the record his view on these matters. That will give additional flesh to the protocol in the event of difficulties downstream. Therefore, this is a useful debate for us to have, which is one reason why I, on behalf of the official Opposition, signed the prayer against the protocol when it was tabled by my right hon. Friend and his colleagues before Christmas.

I shall start with a small gripe. Hon. Members will know from looking very carefully at the order that it does, in fact, come into effect on 16 January 2012. Today is 23 January 2012 and although, no doubt, the Clerk will advise the Committee in due course on these matters if we request it, as a matter of parliamentary principle, we should always have such debates before an order comes into effect. There are opportunities for us to consider these matters and, in simple terms, there is the potential for debate on the issues. Whatever we think about them and whatever the parliamentary process is, the outside view is often that these matters are cut and dried and that there is no opportunity for us to reject the order. I know that there is, but such an approach sends a signal accordingly.

I wish to give the Minister time to respond, so I will try to be reasonably brief. I support the points made. We need to have clarity because, whatever our views on the police commissioner role—hon. Members will know what the view of the official Opposition was on that—now the role has been legislated for, we will, as my right hon. Friend the Member for Cardiff South and Penarth says at every opportunity, be contesting these elections. We hope to see various individuals elected in due course.

The difference is that the powers currently vested in the police authority will be vested in an individual who is elected on 15 November this year. The police authority was made up of a number of individuals drawn from different parts, political hues and geographical areas of a particular police authority, whereas the police commissioner will be a single individual, elected on a single date, with a mandate for four years, rather than elected annually by the police authorities, as police chairs of authorities are currently.

It is important that we have a protocol in place, because the person elected for each of the 41 authorities on 15 November will have significant powers. As was exercised during the passage of the 2011 Act, they will have the potential to have significant sway in relation to the responsibilities of policing in a particular geographical area. I will return to that point in a moment. What we are legislating for in the protocol and what we have discussed during the passage of the Act is, effectively, the relationship between the police and crime commissioner and the chief constable of that authority. I have no doubt that, in almost every case and undoubtedly on almost every occasion, the relationship between the police and crime commissioner and the chief constable will be positive. There will be give and take on both sides, but there will be a positive relationship where people are held to account.

We must look at and legislate for the occasions when there could be conflict or differences of opinion, when there might be breakdowns in relationships, and when individuals—the police crime commissioner and/or the chief constable—feel that they are not being dealt a fair hand. That is why the protocol is important.

In broad terms, I welcome the protocol's development, but I want to make a couple of specific points about the initial draft before us, which came into force on 16 January. The Minister indicated that under paragraph 43 of the protocol the Home Secretary will review the protocol periodically,

"in particular during the first term of office of the first PCCs."

Given what has been said today by hon. Members on both sides of the Committee, I want to press the Minister on whether that is sufficient to allay the concerns of the Committee and the public at large. I would particularly like an indication from the Minister on when he intends to undertake that periodic review. The first term of office of the first PCCs will end in May 2016, which will be four years away in May. That means that in theory we could have three years of the protocol operating with glitches or issues arising which, as my right hon. Friend the Member for Leicester East said, may result in 41 commissioners banding together to make representations to the Minister.

I seek an assurance from the Minister today that he will consider that early in the first election term of the PCCs. As has been mentioned today, no elected police and crime commissioner has had any input into the protocol. On 15 November, 41 will be elected. It would be perfectly reasonable for the Minister, without giving any ground whatever, to tell the Committee that by the end of 2013, that review will have been undertaken with the police and crime commissioners in post so that we have some input from those from the elected side who must work with the protocol that he is keen to ensure is

[Mr David Hanson]

a success, instead of leaving that, as is currently the case, until the end of the first term, which is four years and three months away.

Keith Vaz: It is also important that we discuss the protocol before the election, given the low profile of the police and crime commissioners at the moment, although there is a commitment for the Police Minister to stir up enthusiasm for them. It is important that the public know the responsibilities of the chief constable and the police and crime commissioners. We really ought to get the document agreed and into the public domain as quickly as possible.

Mr Hanson: The document is agreed. It has come into effect, and can only be referred to today. Essentially, I am trying to be helpful, and I would welcome an indication from the Minister on whether he can review it with the police and crime commissioners, perhaps one year after the PCCs have been elected, at the end of 2013. That would be reasonable, and allow consideration of the points that right hon. and hon. Members have raised today, and a view of the document as a whole.

I would like some clarity from the Minister about the legislative status of the document. The matter has been raised today by hon. Members on both sides of the Committee. The explanatory memorandum says that "the Protocol is not drafted in what might usually be regarded as legislative language."

It is unusual for a document that is not drafted in legislative language to come before the House of Commons. Will the Minister give an indication of its ultimate status? We are not discussing when things are going well. We are discussing guidance and support for police and crime commissioners. But when things have gone badly, people will refer to this document if they are worried about their role as chief constable or police and crime commissioner. We need some clarity from the Minister as to how it would stand up in a court of law, or in a dispute with a sacked chief constable or with a police and crime commissioner who has had his or her authority usurped by the Home Secretary because of concerns raised by Her Majesty's inspector of constabulary and/or the chief constable and/or ACPO and/or perhaps the policing panel in due course. I just need some clarity about the legal status of the document, given that it states that it has none.

The Minister has several times discussed the issue of proper and improper political interference. However, it would be helpful for the present debate if he would set that out today. Even the Association of Police Authorities, which says it is broadly satisfied with the protocol, says it does not define how a mutually agreeable balance might be achieved in joint decision making about policing priorities and the allocation of resources.

Mark Reckless: I think that the right hon. Gentleman said that the protocol stated that it had no legal status. Can he refer us to where it says that?

Mr Hanson: Paragraph 3.1 of the explanatory memorandum to the order states that

"the Protocol is not drafted in what might usually be regarded as legislative language."

That strikes me as extremely strange. I just want to get some clarity from the Minister about that statement. If I were a chief constable or police commissioner who was in dispute about the protocol, what would its status be?

Alun Michael: Paragraph 6 of the protocol also states that it does not legally bind the Commissioner of the City of London police, which by implication suggests that it is legally binding in other aspects, although what they are is not clear. That was the point of my earlier question.

Mr Hanson: I do not want to make a meal out of that point. I simply want the Minister to clarify it. If people fall out over the protocol, they will look at what the explanatory memorandum and the protocol say, and what the Minister says in response. That strikes me as an area in which we need clarity, not confusion.

Dr Huppert: I understand the concern that the shadow Minister raises, but one of the great things about the protocol, from my perspective, is the fact that it seems to be written in language that one might expect the general public to understand, and not in the legislative language that I find extremely hard to understand. I hope that he understands that that is what is intended.

Mr Hanson: I hope the Minister accepts that I am not trying to cause him difficulty on the issues in question; I am trying to explore the areas in which concerns might be raised in the event of a natural breakdown, downstream, between the police commissioner and the chief constable. For example, paragraph 5 of the protocol states:

"The staff of each PCC and the constables and staff of each police force are expected to have regard to this document."

What happens if they do not have regard to it, given its lack of legal status? There are numerous examples in the protocol of words that—to go back to the point made by my hon. Friend the Member for Blackley and Broughton—can be interpreted, and on which I would welcome clarity from the Minister.

Paragraph 18 states that the police and crime commissioner

"must not fetter the operational independence of the police force and the Chief Constable who leads it."

I can provide a relevant example. My local force in north Wales was notorious, for a while, on the issue of speed cameras, because the chief constable, the lead member for ACPO, believed that they were very important. I happen to agree with him. However, had the police and crime commissioner election taken place at the time of his highest profile on that issue, there would undoubtedly have been a candidate, who would probably have been elected, standing on an anti-speed camera ticket.

Where would be the operational independence if the chief constable argued consistently that he judged that that operational issue—police speed cameras—was saving lives, and so was operationally important, when the police and crime commissioner might well have won an election standing on a manifesto that said there would not be police speed cameras in that force? I want some clarity on that.

Paragraph 19 states that police and crime commissioners will need access to information to enable them

"to exercise the functions of their office effectively...Such access to any information must not be unreasonably withheld".

The Minister might tell us what unreasonably means. Paragraph 28 relates to the Home Office's operational involvement. It states that the Home Secretary will be involved "only as a last resort". What does last resort mean? Given the lack of legal status on these matters, there is a range of issues that we must consider and discuss.

Overall, I welcome the progress towards the protocol. However, judging from the comments made by hon. Members of all parties, there is still concern about the measure and how it will operate. My final plea to the Minister is that he gives himself scope to review the protocol in the order. I have concerns about wording; concerns were raised by members of the Home Affairs Committee; and if my hon. Friend the Member for Birmingham, Edgbaston were elected mayor of Birmingham, there would be concern about her relationship with the police panel and the police and crime commissioner.

Therefore, if nothing else today, the Minister must give us an early guarantee that he will review the protocol within 12 months of its coming into effect, when the police commissioners are in office—in other words, by the end of 2013. Doing so would not give him any difficulties. It would give him scope to improve the protocol if necessary, to consult those who are elected, and to ensure that the Home Affairs Committee's comments were reflected on. It might also give him scope to prove completely wrong those of us who have criticised aspects of the measure today.

5.41 pm

The Minister for Policing and Criminal Justice (Nick Herbert): I join all those who have spoken in welcoming the opportunity to debate these important issues. I understand that the intention of the Chair of the Home Affairs Committee in praying against the order was not to object to it, but to encourage debate. I note that all those who have spoken have done so in favour both of the principle behind the protocol and broadly of its wording. I am grateful for that, because the Government took great trouble in drafting this difficult document. Our careful consultation process included publishing the document in draft and holding valuable discussions with members of the Select Committee, to which I have given evidence. Given the difficulties, we were pleased to be able to secure broad agreement from the interested parties.

First, it is important to say that it was always the Government's clearly expressed intention not to try to define operational independence. The police themselves advised strongly, through ACPO and senior police leaders, that we should not attempt to define operational independence in law. As my hon. Friend the Member for Rochester and Strood observed, there is an evolving body of case law. It is important to note that the fundamental legal position is that control and direction of a force remains with the chief constable. Indeed, in a speech that I delivered to the Institute for Public Policy Research just before the then Bill was considered in the other place, I asked: "Who runs the police?" and I concluded that chief constables run their forces and exercise day-to-day control and direction. They answer to police authorities now, but they will answer to directly elected police and crime commissioners. It is not the intention in the legislation or the protocol to interfere with such operational independence, but we did not

think that it would be wise to try to define it. We sought to give clarity in an accessible form to what the legislation says, and have set it out in the protocol.

Mark Reckless: It is welcome that the protocol develops that clarity. I think we all agree that it is not sensible to try to define operational independence in law and that chief constables should have the day-to-day control of their forces, but does the Minister accept that there has been some uncertainty about police authorities and the issues they deal with, and about the remarks made by judges in some cases? I gave an example in relation to oversight by central Government. The protocol and the will of Parliament as expressed in the agreement between the parties we have witnessed today set a new context in which the common law will evolve.

Nick Herbert: I agree, and I think that my hon. Friend will be reassured by my later comments about the judgment he mentioned. First, though, I shall deal with a point made by the right hon. Member for Cardiff South and Penarth, who is an aspiring police and crime commissioner, and by the Opposition spokesman about the provision for review, which is in paragraph 43 of the protocol. I will not commit to a review within a defined period. We have said that it will be important to have a review during the first term of office of the first directly elected police and crime commissioners. We will be completely open-minded about it, and the timing will depend to a great extent on how the protocol stands up and whether new issues are introduced. The Home Secretary will be open-minded about the need for that review. The protocol is issued subject to consultation, so we do not have closed minds about when the review should take place. As has been noted, police and crime commissioners could not be represented at the discussions, because none were yet elected, but we did have police authority representation and the deputy Mayor. It will be important to see how the protocol evolves.

On the status of the protocol, I have dealt with these issues before and in correspondence with the Committee but let me restate that the statement that the protocol "does not legally bind the Commissioner of the City of London Police"

is intended only to make it clear that the protocol does not apply to the City of London because the legislation does not either: there is no police and crime commissioner in the City of London. There is no intention to suggest that the protocol is legally binding otherwise. The protocol is legally binding only to the extent that it is a statement of legislative provisions in the 2011 Act or previous legislation, and the fact that the parties have to have regard to the protocol in exercising their functions. That point is made in the explanatory memorandum, which refers to section 79 of the 2011 Act.

Alun Michael: That is a helpful clarification. Would it therefore be right to say that all the parties should not look to the protocol for the legal requirements, because those should be set out in legislation and other decisions, and that the protocol should inform their thinking about relationships, rather than provide legally binding requirements on anybody?

Nick Herbert: I go back to what I said: the parties have to have regard to the protocol, which has been issued by Parliament, so it has a certain status. The

[Nick Herbert]

words in themselves are not legally binding, but the parties have to have regard to them, or they may set out positions in law that are in the Act itself or in previous legislation. The protocol therefore has an important status to which all parties must have regard.

On the point made by my hon. Friend the Member for Cambridge about the panel's veto, that power is set out in the 2011 Act, which expressly gives the panel a veto. I have already set out to the House how that veto will operate, and I do not intend to detain the Committee by adding to that explanation.

My hon. Friend expressed concern about chief constables' attending the panel. It is important to be clear that the panel is there to hold the police and crime commissioner to account; it is not there to hold the chief constable to account. It is important that panel members understand the limits of their role: they will be performing an important role in providing a check and balance, in accordance with the coalition agreement, on police and crime commissioners. That is what is intended in the legislation. They have no power under the Act to seek to hold the chief constable to account. It may well make sense for the chief constable to appear before the panel to answer specific questions about operational matters, but we did not want to give the panel power to compel the chief constable to attend precisely because we wanted to make it clear to panels that it was not their role to hold the chief constable to account. That is the role of the elected police and crime commissioner. I am grateful for the opportunity to restate that.

In giving evidence to the Home Affairs Committee, I dealt with the question of "improper political interference", but today my hon. Friend raised the issue of Tasers and referred to comments that he believed the chief constable of Cambridge made about the discretion he claimed he had to issue Tasers. That goes to the heart of operational independence and the difficulty of defining it. The 2003 code of practice on police use of firearms and less lethal weapons states:

"Chief officers of police, in consultation with their police authorities, will be responsible for the acquisition of weapons requiring special authorisation for use in their force areas".

That clearly includes Tasers. Chief officers must have due regard to the code of practice, although they do not have to comply with it. Nevertheless, as I said to the Select Committee, although the deployment of Tasers may be an operational matter for chief constables, it would be very unwise of a chief constable to seek to deploy them without having first discussed it with a police and crime commissioner or to do so in defiance of the police and crime commissioner's wishes. The police and crime commissioner sets the policing plan and the budget, albeit the plan is created in consultation with the chief constable, so although, on a strict legal interpretation, a chief constable may go on deploying Tasers in defiance of a directly elected police and crime commissioner, it would clearly not be a sensible course to pursue.

I was precisely that sort of question that made the Government hesitant about seeking to provide greater detail in the definition of operational independence. Where an accommodation has to be reached between the elected police and crime commissioner and the chief

constable, the idea that the chief constable could make such decisions regardless of the views of the elected police and crime commissioner is, in my view, erroneous. I am happy to make that clear. I can see that my hon. Friend the Member for Rochester and Strood is concerned, so I will give way to him briefly.

Mark Reckless: Were the police and crime commissioner not to give a budget for Tasers, the question of the chief constable's being able to deploy would not even arise, because the budget is a matter for the PCC.

Nick Herbert: My hon. Friend must be correct when it comes to the new deployment of such a weapon; the issue is whether chief constables could go on deploying existing Tasers. However, I have stated the Government's view, which is that while a strict interpretation may be that is an operational matter for the chief constable alone to determine—that would be for the courts to decide—realistically, a chief constable would not be able to pursue such an operational decision in the absence of support from an elected police and crime commissioner. I hope that that also helps to answer the points raised by the Chair of the Select Committee.

I hope those comments also address the concerns raised by my hon. Friend the Member for Rochester and Strood, who described Lord Denning's famous judgment in *R. v. Metropolitan Police Commissioner, ex parte Blackburn*, in 1968, as "exorbitant". Lord Denning said that the police were accountable only to the law, but it is now widely agreed, I think, that that is a narrow and legalistic interpretation of police accountability. The police must answer to someone for the kind of policing they practise; somebody must set the budget for them and set the plan, and the people must have a voice. The idea that the police answer only to the law in the exercise of their functions is surely relevant only in relation to specific operational matters and the decisions the police have to make as constables in arresting somebody and in pursuing investigations, where it is widely agreed and accepted by all sides that there should be no political interference.

The hon. Member for Birmingham, Edgbaston—another potential candidate for elected office, although of a different kind perhaps—asked whether a directly elected mayor could be a police and crime commissioner. In law, yes; in practice, it would be difficult because the jobs are different and have been deliberately designed to be. It would not be possible to give directly elected mayors responsibility for policing without hollowing out police forces—for example, if policing in Birmingham were made the responsibility of a directly elected mayor, that would hollow out the West Midlands police force. We therefore thought it sensible that police and crime commissioners should have responsibility for the whole of policing in their areas. However, mayors will automatically have a seat on police and crime panels, and I hope that that answers the hon. Lady's second question. As for whether the Home Secretary will meet police and crime commissioners and mayors, that will be a matter for the Home Secretary at the time. There is no statutory responsibility on the Home Secretary to meet them.

My hon. Friend the Member for Edinburgh West asked about police and crime commissioners' funding. I have already said it is important to understand the

limits of their role. We do not intend to provide additional funding beyond that which has been agreed already, because the costs of the new governance should not exceed the current costs. He also raised the question of police and crime commissioners' wider responsibilities. I should point out—this is of particular interest to those who are considering standing—that it is important to realise that police and crime commissioners have a wider responsibility than merely holding the force to account. That is the purpose of what is set out in the protocol. The 2011 Act sets out that commissioners have wider responsibilities—for example, commissioning responsibilities in relation to community safety—and we have said that we wish to consult on giving them responsibility for victims. That wider responsibility could evolve in future, and we have left the door open to that. My hon. Friend correctly quoted Peel, and it is, of course, the basic mission of the police to prevent crime and disorder.

The hon. Member for Blackley and Broughton said the protocol was necessarily a *de minimis* document, and I agree. He raised an interesting question about recent and not-so-recent riots in Greater Manchester and asked whether the commissioner would have responsibility for deployment decisions taken by the chief constable that he felt were wrong. Again, the answer must be no. Strictly, those deployment decisions will be matters for the chief constable, and that is clear

from the protocol. It is, however, inconceivable that important questions about deployment would be addressed without consultation with an elected police and crime commissioner. Furthermore, we are issuing a strategic policing requirement, which will have statutory effect and chief constables and police and crime commissioners will have to have regard to it. That will ensure that policing is organised to deal with national threats, which include threats to public order, so there will be provisions to ensure that resources are deployed around the country to meet national threats in a way that an individual police and crime commissioner could not seek to prevent.

I hope that has dealt with all the points that have been raised. It is immensely encouraging that the official Opposition have now swung wholeheartedly behind this policy, and we have had the news that the former Deputy Prime Minister intends to stand as a candidate—a truly heavyweight candidate in all senses. We forgive the Opposition for all their sins in opportunistically opposing the legislation, given that they now support it.

Question put and agreed to.

Resolved,

That the Committee has considered the Policing Protocol Order 2011 (S.I., 2011, No. 2744).

6 pm

Committee rose.