

TO	Department for Business, Energy and Industrial Strategy
FROM	Independent Office for Police Conduct (IOPC)
REGARDING	Civil Nuclear Constabulary: Service expansion and diversification A consultation seeking views on potential legislation to extend the Civil Nuclear Constabulary's remit in the Energy Act 2004.

Our interest in this matter

1. The IOPC oversees the police complaints system in England and Wales and has a statutory duty to secure and maintain public confidence in it. We are independent, and make decisions independently of the police, government and interest groups. We investigate the most serious complaints and incidents involving the police across England and Wales, as well as handling certain applications for a review of the outcome of a complaint, from people who are not satisfied with the way police have dealt with their complaint.
2. Our remit includes specialist police forces such as the Civil Nuclear Constabulary (CNC), which is the subject of this consultation. Any change to the role of the CNC and how it operates has the potential to impact on our work.
3. More information about the IOPC, our remit, purpose and functions, can be found at Annex A.

Response to consultation

4. The consultation poses a number of questions of which all, except one, are not relevant to the nature of the IOPC's remit over the CNC. We will therefore only respond to consultation question 12.

Question 12: If the CNC expand to other areas, how may its existing governance framework need to be reformed?

5. Currently, the IOPC's remit over the CNC does not result in a significant amount of work. Over the past five years¹, we have received five referrals, none of

¹ 1 April 2016 to 26 July 2021

which resulted in an IPCC/IOPC² investigation. In the same period, we received two appeals. The nature of the CNC's work, which is predominantly security of the civil nuclear sector and safeguarding nuclear material, and the limited jurisdiction of CNC officers (to specific geographical locations and circumstances) means there is little contact with the general public, hence few complaints or incidents requiring our involvement.

6. The first proposal being consulted on is to expand the services of the CNC beyond the civil nuclear sector, in particular to other critical national infrastructure sites that require an onsite trained guard force. If the work of the CNC only expands to include other critical national infrastructure sites, the nature of the constabulary's work should remain the same or very similar to what it is now; it is, therefore, unlikely that such an expansion will result in a significant increase in work for the IOPC.
7. If, however, the range of activities the CNC provides is expanded, there is potential for this to lead to CNC officers having more contact with members of the public, and thereby receive more complaints and be involved in more incidents requiring our involvement. It is not clear from the consultation document what additional activities there could be so it is not possible to assess what the likely impact on our work would be; this will need to be considered when additional activities are defined.
8. The second proposal being consulted on is to enable the CNC to provide support more easily to other police forces. Current legislation only enables the CNC to provide planned support to Home Office forces outside CNC jurisdiction for specified circumstances and where there is a signed collaboration agreement with each force. The proposal to enable this to happen more easily, therefore, has the potential to impact the work of the IOPC.
9. The assumption is that, if it is easier and quicker to deploy CNC officers to assist other police forces, these instances will become more frequent and the types of incidents CNC officers are involved in will also diversify, both of which will increase contact with the general public and thereby give more opportunity for complaints or other serious incidents to arise. This in turn is likely to result in an increase in referrals to the IOPC (and potentially independent investigations) and reviews, which will require resourcing. While we would not expect any increase to be significant, this will need to be assessed if and when the proposal is implemented. There will also need to be a similar assessment for the professional standards department (PSD) of the CNC, and their capacity

² The IOPC came into existence in January 2018 and was formerly the IPCC (Independent Police Complaints Commission).

and capability to manage any increase in complaints and serious incidents involving members of the public.

10. It would also be worth considering the fact that the CNC does not have jurisdiction outside of limited areas and circumstances, which means the PSD is reliant on Home Office forces to progress criminal matters in relation to complaints and conduct matters concerning CNC officers; this can cause issues and delays. Sometimes there is a difference in opinion between the CNC and the Home Office force as to whether something should be pursued criminally and decisions not to proceed can hamper the progress and effectiveness of a PSD conduct investigation in terms of securing evidence and pursuing certain enquiries. This situation will be exacerbated if there is an increase in complaints and serious incidents.
11. The IOPC would also highlight that the expansion of the CNC to other areas requires some thought in relation to any expansion outside of England and Wales. Currently, the IOPC has jurisdiction over the CNC via a section 26 agreement³ to apply the police complaints regulations to CNC officers (including provisions for former officers). Both those regulations and the section 26 agreement only apply to England and Wales, but the CNC operates in Scotland also.
12. In certain circumstances⁴, for former police officers who operated in England or Wales and fall within a specific category (known as Condition C)⁵, the Director General of the IOPC is responsible for determining whether it is reasonable and proportionate to bring disciplinary proceedings; however, there is no one with that legal obligation for former officers who were subject of an investigation that took place in Scotland.
13. The IOPC's Director General has currently accepted responsibility for making the decision with respect to Condition C officers from Scotland, on the understanding that this will be rectified in legislation as soon as possible (so that Scottish authorities are the decision maker in these instances). The expansion of the CNC could lead to more officers operating in Scotland, exacerbating the current situation, and to CNC officers also operating in Northern Ireland, which could lead to a similar situation to that in Scotland. We would therefore request that the amendment to legislation to rectify the situation in Scotland is expedited

³ See Annex A for more information

⁴ Where a Condition C officer (see next footnote) is subject of an IOPC independent or managed/directed investigation and the investigation finds they have a case to answer for gross misconduct.

⁵ Former police officers fall within Condition C if they resigned or retired more than 12 months before an allegation first came to the attention of the appropriate authority, local policing body or IPCC/IOPC.

and that any expansion of the CNC is supported by legislation to avoid a similar situation recurring elsewhere.

IOPC
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Annex A - The IOPC and its remit

1. The IOPC, formerly the IPCC (Independent Police Complaints Commission), came into existence in January 2018. The IPCC came into existence in April 2004.
2. The IOPC oversees the police complaints system in England and Wales and has a statutory duty to secure and maintain public confidence in it. We are independent, and make decisions independently of the police, government and interest groups. We investigate the most serious complaints and incidents involving the police across England and Wales, as well as handling certain appeals from people who are not satisfied with the way police have dealt with their complaint.
3. Over time our original remit covering police forces across England and Wales has been extended to include:
 - Police and Crime Commissioners and their deputies
 - the London Mayor's Office for Policing and Crime and his deputy
 - certain specialist police forces (including the British Transport Police, the Ministry of Defence Police and the Civil Nuclear Constabulary)
 - Her Majesty's Revenue and Customs (HMRC)
 - staff who carry out certain border and immigration functions who now work within the UK Border Force and the Home Office
 - the National Crime Agency (NCA)
 - officers carrying out certain functions at the Gangmasters and Labour Abuse Authority (GLAA)
4. The majority of complaints against the police are dealt with by the relevant police force (or agency) without IOPC involvement. However, certain types of complaints and incidents must be referred by the police to the IOPC. These include where someone has died or been seriously injured following direct or indirect contact with police, as well as allegations of serious corruption, serious assault, and a criminal offence or behaviour liable to lead to misconduct proceedings which in either case is aggravated by discrimination on specified grounds. We then decide whether an investigation is necessary, and, if so, what level of involvement we should have in that investigation. We may choose to conduct our own independent investigation, manage or supervise a police investigation, or decide that the matter can be dealt with locally by the police.
5. In order for the IOPC to have jurisdiction over specialist police forces, such as the Civil Nuclear Constabulary, there needs to be an agreement in place between the IOPC and the relevant force. This is known as a section 26 agreement in reference to section 26 of the Police Reform Act 2002, which allows for such agreements to be made.