

Crime and Courts Bill

Fact Sheet 7 of 12 on the National Crime Agency

The National Crime Agency: independent scrutiny - inspections and complaints

1. Public scrutiny of the NCA and its officers by independent bodies will play a vital role in making sure that the Agency is fully and publicly accountable for its actions. Clause 10 and Schedule 6 of the Crime and Courts Bill provide for the NCA to have independent inspection and scrutiny arrangements.

Independent inspections

2. The public must feel confident that the NCA is efficient and effective, spending taxpayers' money in a way which delivers a real impact on the fight against serious, organised and complex crime. While much of the information about how the NCA is fulfilling its duties will be made public, as appropriate, by the Agency itself (see the separate Fact Sheet on the NCA Governance, transparency and scrutiny arrangements), it is important that an independent body has the remit to inspect the activities of the NCA and shine a light on issues or activities that the public have an interest in.

3. Clause 10 provides for Her Majesty's Inspectorate of Constabulary (HMIC) to be the lead inspectorate fulfilling this vital role. In the new policing landscape, the Police Reform and Social Responsibility Act 2011 gives HMIC greater independence to act directly in the public interest in the way that it scrutinises policing and highlights those areas that need to improve and includes clearer and stronger powers. The Government has endeavoured to ensure that this increased independence is also reflected in HMIC's role in relation to the National Crime Agency.

What will be the frequency and form of the inspections of the NCA by HMIC?

4. As an independent scrutiny body, it will be for HMIC to prepare an inspection programme, deciding which NCA issues should be scrutinised. HMIC will consult with the sector on its inspection programme, and agree it with the Home Secretary.

5. The Home Secretary can also request HMIC to carry out an inspection on a particular area of concern, or carry out any other duties, such as giving advice, as she may think is necessary.

Will HMIC be able to inspect the NCA unannounced?

6. HMIC will decide the form and frequency of their inspections as set out in their inspections framework, which is agreed with the Home Secretary. However, HMIC is not obliged to give notice to the NCA as to when it will carry out these inspections. The additional power set out in Schedule 6, which grants HMIC access to NCA premises and documents for the purpose of its inspections, further strengthens HMIC's ability to carry out its role as a robust and independent scrutiny body.

Does HMIC have the power it needs to carry out robust independent inspections of the NCA?

7. The Crime and Courts Bill confers on HMIC some important powers to bolster its role as an independent scrutiny body for the NCA. Clause 10 makes it explicit that the form and frequency of inspection will be independently determined by HMIC, as set out in an inspections framework.

8. Schedule 6 grants HMIC access to NCA premises and documents for the purpose of its inspections, and requires the Director General to make these premises available at the earliest opportunity. Schedule 6 also imposes a duty on the Director General of the NCA to disclose any information or documents to HMIC that it requests, and believes to be required for the purpose of its inspection. This duty is subject to the usual safeguards on information sharing, as set out in Schedule 7 (see Factsheet on the use and disclosure of information), which are critical to ensuring that sensitive information is properly handled through the correct gateways. There is a backstop power for the Home Secretary to make regulations relating to information sharing between the NCA and HMIC which can modify these gateways, should they impede proper independent scrutiny.

Will HMIC inspect the NCA UK-wide?

9. The NCA will be a UK-wide Agency and as such it will be subject to comprehensive UK-wide scrutiny, in a way which properly respects devolved arrangements. HMIC's remit is principally in England and Wales but, as agreed with the devolved administrations, for the purposes of the NCA this remit will extend to Scotland and Northern Ireland. Planned inspections of the NCA carried out in Scotland and Northern Ireland will be subject to prior consultation with the appropriate administration, who will receive any reports made from that inspection.

10. Due to the particular inspection arrangements in Scotland, we have agreed that HMIC should consult the Scottish inspectors (Her Majesty's Inspectorate of Constabulary for Scotland) on the need for a joint inspection, regarding inspections carried out wholly or partly in Scotland.

What will happen to HMIC's inspection reports?

11. HMIC will give a report of its inspection to the Home Secretary, who will publish it in a manner as she feels is appropriate. This allows for her to redact any information in relation to which publication might not be in the interests of national security; could prejudice the prevention or detection of crime, the apprehension of offenders, or the prosecution of offences; or might jeopardise the safety of any person.

12. For an Agency dealing with some of the most harmful and dangerous criminality in the UK, these are important considerations which must be factored in prior to publication of any information. But there is a clear commitment that as much information as possible should be published about the activities of the NCA in order to retain openness and transparency.

Complaints oversight

13. It is expected that NCA officers will carry out their duties with the highest possible standards of professionalism, integrity and fairness. However, there may be occasions when a member of the public believes that the conduct of a NCA officer has fallen below the standard that could be expected, or may amount to misconduct or even an allegation of criminal behaviour. Should this be the case, the NCA will have a robust and transparent internal complaints process through which it will investigate and seek to resolve that complaint.

14. In order to maintain public confidence that any complaints about the conduct of NCA officers will be given due consideration and dealt with appropriately, this process must be overseen by an independent body. The Crime and Courts Bill provides for this independent oversight (clause 10/schedule 6) to be carried out by the appropriate complaints oversight bodies across the UK.

15. These provisions have also addressed a gap in this independent oversight pertaining to its principal predecessor, the Serious Organised Crime Agency. By including asset recovery activity carried out by NCA officers in England and Wales, and Northern Ireland within the respective oversight remits of the Independent Police Complaints Commission and the Police Ombudsman for Northern Ireland, the provisions in the Crime and Courts Bill ensure that NCA officers may be independently held to account for their actions, regardless of the functions they are discharging or where they are operating, should a serious complaint or conduct matter arise.

Who will oversee complaints made against the conduct of NCA officers?

16. The Independent Police Complaints Commission (IPCC), whose remit covers activity in England and Wales, is well placed to provide independent scrutiny of any complaints made against the conduct of NCA officers. Clause 10 provides for this oversight. This provision requires the Home Secretary to make regulations (subject to the negative resolution procedure) governing how this oversight function will work, so that the IPCC has a similar role in relation to the oversight of complaints and conduct matters against NCA officers in England and Wales as it has in relation to police forces. This provision will put IPCC oversight of the NCA on a stronger statutory footing than the arrangements in place for SOCA.

What will be the arrangements for complaints made regarding NCA officers conduct in Scotland and Northern Ireland?

17. NCA officers carrying out their duties will be subject to independent oversight across the UK, respecting devolved arrangements.

18. In Northern Ireland, the Office of the Police Ombudsman of Northern Ireland will provide independent scrutiny of any complaints made against the conduct of NCA officers, hearing appeals regarding complaints and independently investigating serious cases, such as allegations of gross misconduct or where NCA activity results in a death.

19. In Scotland, under the Police and Fire Reform (Scotland) Act 2012, the independent complaints oversight body for the NCA will be the Police Investigations and Review Commission. The current Scottish police oversight body (the Police Complaints Commission for Scotland) only provides recourse to the public if they are not satisfied with the handling of a complaint. When it becomes the Police Investigations and Review Commission, in April 2013, its remit will be extended to include independent investigation of serious cases, such as allegations of criminal offences or serious conduct incidents. As this new strengthened remit will apply to the NCA, this will achieve a much more consistent level of scrutiny of NCA officers' conduct across the UK.

Further external scrutiny

20. In order to make use of covert investigatory powers and techniques, the NCA will be subject to the Regulation of Investigatory Powers Act 2000 and the Police Act 1997 (schedule 8). This brings the Agency under the statutory remit of the Office of Surveillance Commissioners (who provide oversight of the use of covert surveillance and covert human intelligence sources), the Interception of Communications Commissioner (who provide oversight of the use of interception powers) and the Investigatory Powers Tribunal (which can investigate complaints from the public about the use of intrusive powers).

21. As a crown body, the NCA is automatically subject to the Health and Safety at Work Act 1974, and subject to regulation by the Health and Safety Executive. Given the operational nature of the Agency's work, the NCA will be exempt from some of the duties set out in the Act as are the police, which relate primarily to the provision and use of work and personal protective equipment, and are set out in regulations.

Home Office
January 2013