

## **Crime and Courts Bill**

### **Fact Sheet 10 of 12 on the National Crime Agency**

#### **The National Crime Agency: advisory panel for the designation of the Director General with operational powers**

*This factsheet should be read in conjunction with the fact sheet on operational powers.*

#### **Operational powers of the Director General**

1. The Director General of the National Crime Agency will be an operational crime-fighter: embodying the crime-fighting focus of the Agency, leading it by example, and taking an active part in Agency operations alongside other officers.

2. Whilst the Director General will lead the organisation, the Bill makes it clear that the Director General is an NCA officer. As an NCA officer, therefore, the Bill provides that the Director General can hold one or more of the same operational powers as an NCA officer – the powers of a constable, a customs officer and an immigration officer.

3. These ‘operational powers’ are distinct from the ‘administrative powers’ that the Director General will have to run the Agency. The Director General will have overall direction and control of the Agency’s operations even if s/he does not hold ‘operational powers’. However, it is only with ‘operational powers’ that the Director General will be able to take an active part in those operations, for example, making arrests alongside other NCA officers.

4. Therefore, as is the case with other NCA officers, the Director General will need to be adequately trained in the operational powers before being designated with them. The power to designate the Director General with operational powers rests with the Home Secretary. To provide independent assurance to the Home Secretary that the training requirements have been met, the Bill provides for an advisory panel to be established for the purpose of providing independent advice on the adequacy of the training.

#### **Arrangements in the Bill**

5. The arrangements for providing the Director General with operational powers are set out in the Crime and Courts Bill:

- Schedule 1, paragraph 7 – provides that a person may only be appointed as Director General provided that he or she is capable of effectively exercising operational powers and is a suitable person to exercise such powers.

- Clause 8 – sets out the operational powers (police, customs and immigration powers) with which the Director General can be designated and vests the power of designation in the Home Secretary (acting on the recommendation of an advisory panel in relation to the adequacy of the training).
- Schedule 5, paragraph 4 – sets out the arrangements for the advisory panel to be established for the purpose of providing independent advice and assurance that the Director General has satisfied the necessary training in order to be designated with operational powers (police, customs and immigration powers).
- Schedule 5, paragraph 5 – provides a regulation-making power so that the Home Secretary, may, by regulations, set out the circumstances when the advisory panel will not be needed for the purpose of designating the Director General with operational powers. For example, where the Director General has existing training and experience which is relevant and timely, and which would be the equivalent of that provided by the NCA.

6. Schedule 5 therefore sets out two complementary processes for providing assurance about the training – the advisory panel (paragraph 4) and a regulation-making power (paragraph 5). The two processes are required to ensure that the Bill provides the necessary flexibility to cover a range of scenarios – for example (i) where a Director General does not have any prior training in the operational powers, or (ii) where s/he does have prior experience, whether in some or all of those powers.

7. Taken together, these two processes deliver appropriate assurance in all situations likely to arise that a Director General will only exercise those operational powers (police, customs and immigration powers) which s/he has been adequately trained to use.

### **Why is an advisory panel needed?**

8. The advisory panel provides independent and expert advice to the Secretary of State before the Director General is designated with one or more of the operational powers. This independent mechanism is important because the judgement as to whether the Director General is adequately trained in the operational powers is best taken by experts in the training of the respective powers (provided through the advisory panel mechanism) and not by the Home Secretary. In addition, the panel is necessary to ensure that there is a separation between the strategic responsibilities vested in the Home Secretary and the operational responsibilities vested in the Director General.

9. There is the potential for members of the expert panel who present evidence about the training undertaken by the Director General to be in the Secretary of State's or the Director General's line of command. As such, whilst the expert members assess the training, the final recommendation as to the adequacy of that training rests with the independent chair.

## **When does an advisory panel need to be convened?**

10. The advisory panel is required after a Director General is appointed; this is so that a new Director General can start using the designated powers, subject to completing any necessary training, as soon as possible after appointment. The advisory panel can also be convened at any other time as is deemed necessary by the Secretary of State.

11. The Home Secretary also has a regulation-making power (Schedule 5, paragraph 5) to set out the circumstances when an advisory panel does not need to be convened in order to designate the Director General with operational powers.

12. The advisory panel will not therefore be a permanent bureaucratic construct. Rather it will be a flexible arrangement that will be convened only when required (usually on the appointment of a new Director General). As different Director Generals may have different skills and experience, the mechanism for the independent assurance of the training requirements needs to be flexible enough to accommodate this. Furthermore, the fact that the panel will include expert members (i.e. experts in the training of each of the operational powers) means that the panel does not need to be convened on a permanent basis to ensure that the necessary expertise of the panel is built up. Rather, panel members will be experts on the basis of their day job.

## **How will the advisory panel work?**

13. The Secretary of State will appoint the advisory panel at the point in time when the designation of operational powers is to be made. As the panel is required to consider the adequacy of the training, there needs to be flexibility in the timing of these arrangements to allow the Director General such time as s/he needs to complete the necessary training.

14. The advisory panel will be made up of an independent chair and expert members:

- **the independent chair** should be a person capable of analysing potentially complex evidence with a view to formulating a reasoned and defensible recommendation to the Secretary of State reflecting the adequacy of the Director General's training to exercise those operational powers, and;
- **expert members** of the panel are expected to be the most senior persons responsible for, or expert in, the training in the exercise of the respective powers that are to be designated – police, customs and immigration powers.

15. The expert members will present evidence to the chair as to the adequacy of the training which the Director General has taken and passed in the operational powers which are to be designated. The chair of the panel will consider the information provided by the expert members, determine the question of the adequacy of the training undertaken by the Director General, and produce a report containing a recommendation on whether or not the training was adequate for the purpose of the designation. Provided the report recommends that the training was adequate, the Secretary of State will designate the Director General with the powers in question.

**What if the Director General is from an experienced law enforcement background with relevant training in some of the operational powers?**

16. It is possible that a successful applicant for the Director General post already has relevant operational training and experience, and in those circumstances the advisory panel will not be needed in order to designate such a person with the operational powers in which they are already trained. The advisory panel however may need to be convened for the purposes of designating the remaining operational powers where there is no prior experience or training.

17. So, for example, if a former, senior and experienced police officer (or customs officer or immigration officer) is appointed as the Director General of the Agency, and that officer had the appropriate training and accreditations etc. in relation to relevant operational powers (police, immigration or customs powers, as the case may be), it would be sensible to allow that person to exercise those powers immediately on joining the Agency, without the need to convene an advisory panel or seek recommendations from its chair.

18. The detail of the circumstances in which this approach would be appropriate – including the definition of ‘adequate’ training in each of the operational powers – will be set out in the regulations. The regulations will need to be approved by both Houses through the affirmative procedure.

Home Office  
January 2013