

Independent Port Constabularies

In this document, the term 'Independent Port Constabularies' is used to refer collectively to the Police services funded by Port Authorities and the term 'Home Office police forces', is used to refer to those police services established under the Police Acts and sometimes colloquially described as 'Metropolitan' and 'County Forces'.

1. What is a Constable?
2. Port Police *versus* Ports policing
3. Why do ports need constables?

1. What is a constable?

Before embarking on a study or discussion of policing, in ports or otherwise, it is essential that the reader has a grasp of the concept of the "office of constable". Although to the layman the terms "*police officer*" and "*constable*" are interchangeable, there is a subtle distinction between a police force and a constabulary. However it is true to say that whilst not all constables are police officers, all police officers in the UK hold the office of constable.

*"The Office of Constable is a unique employment status that recognises the important and distinctive role that police officers perform in society. Police officers hold powers to arrest and can detain people against their will. They are required to comply with the lawful orders of their senior officers, but they also have individual discretion as to how they perform their duties. Most importantly, police officers are required to be, and must be seen to be, independent of government, unbiased in their approach to the public and non-political. Their independence is guaranteed by the office of constable and the operation of the tri-partite agreement [Chief Constables, Police Authority and Government]. This is the very foundation of policing by consent"*¹

The office of constable is deep rooted within English society, and has its earliest origins in the Saxon communities brought by the Romans to Britain to act as mercenary guards for their settlements. The Romans delegated responsibility for maintaining discipline and order amongst the clans to their head men, which in time became a system where ten families would become a "Tything", and each had a "Tything man" leading them. Ten tythings were overseen by a "Shire Reeve", and in times of disorder or when a fugitive was sought, the Shire Reeve would raise a "*posse-commitatus*" of men from his tythings to bring justice or order. (This is the origins of the words "Sheriff" and "Posse" in the genre of American westerns!). This system was maintained more or less until the Norman Conquest, when the Normans introduced the concept of "constable". The word constable is based upon the ancient French word *connetable*, a mediaeval Marshall (originally *mareschal*) office, but also a style of Knights' Helmet worn by them (this is still used as an emblem by the French "Police Nationale"). The office of *connetable* still exists in some academic, ecclesiastical and administrative systems such as in the Government of Jersey. The Normans converted the Tything men to parish constables and the Shire Reeves to High Constables (the latter still existing as a ceremonial public appointment in many Counties of England and Wales, as do "Sheriffs" in certain parts of Great Britain, perhaps where the Normans were less influential). Whilst parish constables had the prime responsibility for bringing offenders before the Justices of the Peace, their importance waned with the onset of the Regency period and the Industrial revolution.

The events in Europe during the early modern period gave rise to the establishment of modern State police forces, and calls were made in Great Britain for improving law and order as traditional communities broke down and the formerly feudal or migrant agricultural workers

¹ *Submission by the Police Federation of England & Wales to the Morris Report, An independent Inquiry into professional standards and employment matters in the Metropolitan Police Service established by the Metropolitan Police Authority, published 14 Dec 2004.*

settled in large numbers around the new industrial centres. (Another key factor was the rise of the upper middle-classes, who did not have the traditional feudal system as protection for their property that the landed gentry relied upon). This was when the first uniformed, paid police forces started appearing - to protect the new suburban districts, industrial sites, mines and railways and enforce order in increasingly anarchic communities. With the notable exception of the famous "Bow Street Runners", established in 1792 under the MIDDLESEX JUSTICES ACT, virtually all the fledgling police forces were established by attesting special constables, a procedure conducted by 2 or more Justices of the Peace and having its roots in an Act of Parliament of 1673. Acts of Parliament started to appear piecemeal sponsored by local MPs and Peers who represented certain social or industrial interest groups (for example, Metropolitan Police Act of 1829, and the Bute Docks Police Act 1839). It was not until 1847, when two significant pieces of legislation were enacted, the TOWN POLICE CLAUSES ACT (in the case of town police) and the HARBOURS, DOCKS, & PIERS CLAUSES ACT (in the case of port police), that national legislation appeared to support the widespread attestation of professional constables. Whilst the Town Police that were previously maintained by virtually every town and city in England and Wales have long since been merged² to form the Home Office police forces we know today, the Independent Port Constabularies are still by and large attested under the original 1847 Act.

"The office of constable dates back to the parish constable, who, by the beginning of the 17th century, was responsible for the preservation of the peace in his bailiwick and for the execution of the orders and warrants of the justices of the peace. The constable's oath and close relationship with the justices of the peace characterised him as a ministerial officer of the Crown, like a sheriff or the JPs themselves, rather than as a local administrative officer. In short, constables have never been civil servants. Various enactments were passed in the 19th and 20th centuries, providing for the establishment of police forces. Powers were not conferred on members of police forces as such, but a member of a police force on appointment had to be attested as a constable by making a declaration. [...] The hallmark of the present day constable therefore remains, as it was in the 17th century, his attestation. Until so attested, constables have neither the authority nor the status of a constable. Once attested, the constable holds that office. [...] What, then, is the precise status of a police constable? When carrying out his duties as a constable, a member of a police force - of whatever rank - acts as an officer of the Crown and a public servant. Constables' powers are exercised by virtue of their office, and unless they are executing a warrant, the powers can be exercised only on their own responsibility. A police constable who deliberately fails to carry out his duties by wilfully omitting to take steps to preserve the Queen's peace or to protect a person under attack commits a criminal offence - the common law offence of misconduct of an officer of justice. The Crown is not liable for the wrongful acts of a member of a police force. Although a constable is an officer of the Crown and a public servant, his or her relationship with the Crown is not that of master and servant, nor that of principal and agent. He or she is a servant of the Crown only in the sense that any holder of a public office may be called a servant of the Crown or the state. [...] They derive from the office of constable. That is of great importance to the nature of policing in Britain."³

The passage above, from a Commons debate on police powers, explains well the situation in relation to attested constables; that traditionally a constable is one who has an occupation or position, but also dually holds the office of constable in order to fulfil their function. In the case of Independent Port Constabularies, the port constable is an employee of the Harbour or Port Authority who also holds the office of constable; whilst most Independent Port Constabularies are highly evolved professional organisations that resemble a modern police force, it is also the case that some Harbour authorities have sworn in Harbour Masters or other employees as port constables, who do not wear a police uniform, but still can rely upon the powers that

² In 1951 there were 124 county or town police forces in England & Wales. By 1964 this was reduced to 117, and was reduced to 49 in 1966 and then to 41 in 1972. Further mergers are currently being proposed by the HO.

³ Andrew Mitchell MP, Hansard, 7 Feb 2005 : Column 1272

accompany the office of constable to execute their duties; in many remote parts of the UK the only police presence in the local community may be such a person.

However, the 'office of constable' is a two-edged sword; whilst it bestows upon the bearer the support of the Courts; there are peculiar responsibilities and liabilities that come with the powers and the privileges. The concept that the constable is a 'crown servant', and yet simultaneously responsible for his own actions is exemplified by a very early Court Case, LAMBERT v GREAT EASTERN RAILWAYS 1908. In this case the railway company maintained that its constables were servants of the Crown, not the company, when executing the powers of a constable. The Court held that this was indeed the case, and that the 2 railway constables concerned were liable for their actions in a case of wrongful arrest, and each were fined £10 for false imprisonment. Therefore every person who holds the office of constable is directly accountable to the courts for their actions, and in the case of a complaint, redress can be made to the Chief Officer as well as the individual constable - both could be liable, and can sue or be sued. It is this fundamental characteristic of the 'office of constable' that eventually won the heated arguments in the early nineteenth century as to whether Continental style uniformed police forces should be established; most MPs and Jurists did not want to see a State militia with powers over the Civic population, and hence the 'office of constable' was used as a guarantee that the new police would not be State controlled.

This liability to multiple routes of accountability is also true of a port constable; a complaint may be levelled at the individual, at his Chief Officer, and indeed at the port or harbour authority as employers, and on top of all of this they are also potentially liable to an investigation by the Independent Police Complaints Commission making a port constable arguably *more accountable* in some respects than a Home Office police officer.

It is important to understand that the holding of the office of constable is not incongruous with being an employee of an organisation other than a Home Office Police Force, and indeed paid professional police is pre-dated by constables by several hundred years. The modern British Transport Police was originally made up of dozens of railway police forces, mainly established in the mid nineteenth century to keep order amongst gangs of railway workers and keep the lines free from obstruction or sabotage by disgruntled locals, feinians and even, latterly, suffragettes. All of these men were employees foremost and constables coincidentally. There are also a great number of modern examples of very similar arrangements to the Independent Port Constabularies; many local authorities across the UK maintain a body of uniformed parks constabularies, attested as constables under the LOCAL GOVERNMENT FINANCE ACT 1972⁴ or other local Acts, and there are other independent small police forces such as the Royal Botanical Gardens Constabulary (not to be confused with the Royal Parks Constabulary - now part of the Metropolitan Police but formerly managed by the Property Services Agency under the Dept of environment, and latterly the Royal Parks Agency under the Dept for Media, Culture & Sport). All of these individuals are employees, and not members of a Home Office police forces, however with certain restrictions and caveats they all hold the office of constable and may fully exercise the powers of a constable within their distinct jurisdictions, and always in co-operation with the local Home Office police forces. There are also many examples of appointments that hold the office of constable, but are not apparently 'police' with uniforms and the other associated trappings; Both Oxford and Cambridge Universities have maintained a body of constables for hundreds of years to maintain order in the University precincts and campus, and there are several Port Authorities that have attested port employees or management as constables simply because they are so remote that a response from a Home Office police forces cannot be guaranteed and the mere local knowledge that there are those with constable powers acts as an effective crime deterrent; there are some remote harbours where the Harbour Master is the only representative of authority *in situ*, and often, if attested,

⁴ Includes LBs of Haringey, Newham, Redbridge, Richmond, Greenwich, Hammersmith & Fulham, Enfield, Barking & Dagenham, Kensington & Chelsea, and Wandsworth. Outside London examples can be found at Sutton, Spelthorne, Birkenhead Non-LA forces include Holland Park, Hampstead Heath and Finsbury Park.

is the only constable within many miles. Port constables are the epitome of what the office of constable is all about; a local figure of trust, appointed by local magistrates, to maintain law and order at a local level within a defined community, and accountable to a local authority. Where the port is often the heart of the community, port constables provide community policing for the community, by the community.

Far from being in decline, all these examples of independent police forces are in fact on the increase, and there is much evidence that they enjoy a very good working relationship with their local Home Office police counterparts; the Home Office police gains a benefit by being able to focus their ever limited resources on more serious crimes or in pursuing performance targets, whereas the port community gets an affordable policing service that they are prepared to pay for, rather than perhaps seeing the same additional financial resource swallowed up into a large organisation without such a measurable gain, transparency and direct accountability - or having an inferior service provided by private security guards.

2. Ports Police *versus* Port Policing

"Ports police officers are full-time constables, sworn in by magistrates, and most if not all have served as police officers [...] The Association of Port Police Chief Officers is the equivalent of the Association of Chief Police Officers. [...] ports police undergo the same training as those in other police forces. In many cases, personnel at the ports work with the police on large-scale operations. [...] Special constable is a legal term. It does not refer to the special constables who give up their time in our communities, but to a full-time post."⁵

Having established that there is a distinction to be drawn between a port police constable (often unhelpfully referred to as members of a "special police force", as the above citation demonstrates; this is misleading as it implies that port constables are "*special constables*" which they are not) and a Home Office police forces constable, it is further necessary to distinguish between "port police" and "policing of ports". The former is an element of the latter; however "policing of ports" is a much wider concept that has involvement of several agencies, including the Home Office police forces.

One of the earliest recorded statements of purpose for police constables originates from Sir Richard Maine, the first joint-Commissioner of the Metropolitan Police, in 1829:

"The primary object of an efficient police is the prevention of crime: the next that of detection and punishment of offenders if crime is committed. To these ends all the efforts of police must be directed. The protection of life and property, the preservation of public tranquillity, and the absence of crime, will alone prove whether those efforts have been successful and whether the objects for which the police were appointed have been attained."

Although this concept still holds true, the modern purpose of policing is defined, by Her Majesty's Inspectors of Constabulary as:

" The purpose of the Police Service is to uphold the law fairly and firmly: to prevent crime; to pursue and bring to justice those who break the law; to keep the Queen's peace; to protect, help and reassure the community; and to be seen to do all this with integrity, common sense and sound judgement. "

Although this statement of purpose has now been adopted or adapted by virtually every constabulary in the UK, Home Office police forces or otherwise, it has little or nothing to do with two key areas of activity that are commonly misplaced in the term 'port policing', those of Customs and Immigration control. It is an established principle that whilst a constable is a

⁵ *Caroline Flint MP, 2nd Standing Committee on Delegated Legislation, 21 Mar 2005*

public appointment, they are not servants of the crown or civil servants, and so quite rightly matters of customs and immigration are vested within other State agencies, HM Customs and Revenue and the Immigration National Directorate respectively.

Whilst a constable may be called upon to assist these agencies, or to bring a suspected offender before the Courts, it would be unconstitutional for a police constable to perform the functions of either a Customs or Immigration officer, and *vice versa* (the latter are prohibited from being attested as special constables). However, both Customs and Immigration perform an integral part of the executive activity that has become widely known as 'port policing' but are more accurately defined as 'border control' activity. Specific functions of the Home Office police forces such as response to major incidents or serious crimes, and Special Branch detectives are also elements of 'port policing' which is rightly provided at a Regional or National level, usually on an intelligence led or directed basis, but is perhaps not obviously connected with the statement of purpose of policing in an everyday sense. Thus it is that 'ports policing' and 'port police constabularies' are distinct areas of interest, whilst not mutually exclusive.

The Independent Port Constabularies units are not an alternative to a timely and appropriate response from the Home Office police forces or other agencies, and neither are the directed specialist services of the National agencies a substitute for day-to-day community policing, in its truest form, that the Independent Port Constabularies perform. Rather the Independent Port Constabularies are an additional tier of policing that is applied to ports, and working in synergy with the local Home Office police forces; they have Memoranda of Understanding or Service Level Agreements in place with the Home Office police forces, and a clear recognition between respective local commanders as to what each others capabilities and limitations are. There is anecdotal evidence from the Independent Port Constabularies that they are frequently called upon by the local Home Office police forces to assist them 'off port', and often this activity is undertaken on the unwritten understanding that reciprocal assistance will be provided if needed. The unwritten but universally understood 'coppers code' decrees that a constable, of any denomination, can expect all of his colleagues and compatriots to drop everything and attend with utmost urgency should ever the call, on duty or off, for 'urgent assistance' be made - the modern equivalent of blowing a whistle. This level of understanding and co-operation is something that cannot be quantified in a documentary agreement, nor be readily understood by any one outside of the police community. However, notwithstanding there is a common law obligation upon every UK subject to assist the police if required, and the Independent Port Constabularies are also so obliged to assist, quite apart from whether they have constabulary powers or not, if asked to do so.

The Independent Port Constabularies are not, therefore, in competition with the Home Office police forces, and both offer distinct services and capabilities that support each other. Where such independent forces exist, in ports or parks or otherwise, they invariably enjoy a close co-operative working arrangement with the local Home Office police forces commander. This is in part due to the recognition that the independents are not a threat, nor claiming to do the job of, the Home Office police forces. There is always a role to play in Ports by the Home Office police forces (and other agencies) in their respective areas of expertise, such as serious crime, counter terrorism, and response - and the Port Authorities already pay for this attention through business rate community charges. The Home Office police forces could not absorb the level of community policing activity currently conducted by Independent Port Constabularies, without significant additional charges to the port authority by the Home Office police forces. If the port authority felt that this would be competitive in any way, they would surely do so as an alternative to the relatively costly running of an Independent Port Constabularies as opposed to private security guards. But the 10 ports that choose to operate Independent Port Constabularies units clearly see a commercial benefit; in fact some use this as a selling point to attract certain business such as the import/export of currency or high value goods.

3. Why do ports need constables?

Notwithstanding the fact that if port authorities did not see the merit in it, they would not pay for their own police units, and also the fact that it is unlikely that Home Office police forces would lavish the same level of attention and service upon a port, even if paid to do so, that a dedicated band of constables would do, the question remains as to why ports are different to other commercial enterprises or communities and have their own constabularies.

The Port industry is unique in that it has been central to the commercial success for the UK, and indeed the wider British Empire, for hundreds of years. In mediaeval times it was a privilege to run a port or harbour, and Royal or Corporate charters were necessary. In more recent times, ports have been run by local and central government, usually by the tier of local government that Harbour and Port Authorities provide, but until the early 1980's also by a nationalised port industry. The port industry is one of the most intrinsically linked industries to the State, whilst maintaining the peculiar independence that is a hall mark of the British administrative system.

The special place of ports in the Governance of the UK, and also their essential role in free commerce, has meant that ports have enjoyed protection in law not normally afforded to other commercial enterprise. It is also recognition of the fact that they have traditionally dealt with some of the tougher members of society, and have been the target of criminal activity since time immemorial. It is no coincidence that river and port police forces were the first organised "police" bodies to be formed in the late 18c and early 19c, decades before most Towns and Counties established police forces.

The primary reason why ports needed constables was to prevent, detect and deter theft. Under the English legal concept of civil liberties, only a constable is empowered to stop, question and search a person on leaving a port. Their traditional role was one of a gate guardian, preventing unlawful access, and ensuring those with lawful access were not stealing goods and chattels from the port. Ports are by the nature often sited in deprived areas, and, ports attracted huge numbers of people from the very margins of society. Petty thieves, gangsters, prostitutes, and fugitives were commonplace. And much has remained unchanged; although working conditions and social privation are greatly improved in the twenty first century, ports still have to contend with socio-economic groups on the margins of society, and virtually identical criminal activity to that experienced by their Victorian forebears. The role of the Independent Port Constabularies has never been one of border control, nor traditionally have they been equipped to deal with serious disorder or crime, or major incidents, however the level of day-to-day community policing that they perform is easily comparable to an inner city Home Office police forces beat- and many Home Office police forces do not perform the variety of work that an Independent Port Constabularies constable might do.

Specific activities and job descriptions aside, the Independent Port Constabularies are there fundamentally to protect property, and in a demanding, often unpleasant and dangerous environment. By protecting property they are maintaining not just order and respect for the law of the land (and significantly to foreign visitors they may be the only obvious manifestation of State authority- and iconic with their instantly recognisable British police uniforms), but also maintaining the efficiency of the port- a principal contributor to the economic wellbeing of the UK. It is this special relationship that ports have in the constitution of the UK that has earned ports the legal right to maintain a body of constables, and one that has been maintained without break for 210 years, and at no expense to the public purse; the concept of Independent Port Constabularies units is a fine example of the DfT's policy stance on the provision of security in ports- that *"the user pays"*.

At present there are 10 Independent Port Constabularies units established in the UK; however, the advent of ISPS, European security legislation, and decreasing value for money in the provision of alternative private security (partly due to the SIA regime) has seen a renewed interest in Port authorities regarding port constabularies. Although most established

Independent Port Constabularies suffered a decline between 1997 and 2003 (commensurate with the general decline in the shipping/ports industries), most are showing a slight increase in establishment to date- and some ports are actively considering re-establishing their units.

Current Independent Port Constabularies units are:

Belfast Harbour Police (also responsible for policing Belfast City Airport)

Larne Harbour Police

Tees & Hartlepool Police

Port of Dover Police (Formerly Dover Harbour Board Police)

Port of Liverpool (also responsible for Manchester Ship Canal)

Port of Bristol

Falmouth Docks

Port of Tilbury Police

Port of Felixstowe Police

Portland Port Police

Timeline in development of Independent Port Constabularies units

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- 1798 1st organised police force in UK: Thames Marine Police.
 - 1829 1st "Home Office Police Forces": Metropolitan police established.
 - 1839 Southampton Docks Police Force established.
Harbours, Docks & Piers Clauses Act enacted.
 - 1847 Belfast Harbour Police formed.
River Tyne Police formed.
 - 1865 Bute Docks Police formed.
 - 1894 L&SW Railway police take over Southampton Docks.
 - 1894 Manchester Ship Canal Police established.
 - 1921 Bute Docks police amalgamates with GWR police.
 - 1933 Dover Harbour Board police established.
 - 1949 British Transport Commission Police created.
 - 1959 Falmouth Docks police established.
 - 1961 BEECHING cuts to railways.
 - 1962 BTP established: loses jurisdiction over roads and inland waterways.
 - 1966 Tees & Hartlepool Police established.
 - 1966 British transport police office in DUBLIN docks closes.
 - 1968 River Tyne Police disbanded.
 - 1968 Port of London Police established.
 - 1974 Manchester Ship Canal police disbanded.
 - 1975 Port of Liverpool Police established.
 - 1976 1st BTP vehicles fitted with blue lights and sirens- only in ports/docks.
 - 1984 BTP withdrawn from Associated British Ports sites.
 - 1990 Aviation & Maritime Security Act regulates security in 80 ports.
 - 2000 DfT issue Modern Ports – A UK policy” critical of Port Police forces.
 - 2001 BTP jurisdiction extended to England & Wales.
 - 2001 DfT Ports Policy commences work on Ports Policy paper.
 - 2003 DfT Ports Policy disseminates draft paper on Port police forces.
 - 2004 EC Regulation on ISPS code regulates 560 ports.
 - 2005 DfT Ports Policy re-disseminates draft paper of Ports Police forces.
 - 2006 DfT Ports Policy promotes recommendations for reform of Port police forces.
 - 2008 DfT publishes Ports Police paper.

Jurisdiction

There is perhaps a strong argument for amending the jurisdiction of port constables, as the current provision is out dated and anachronistic. The current situation with the jurisdiction of a constable is as follows:

- A Home Office police forces *constable* has full police powers any where in England and Wales. They have no police powers in the Crown Dependencies, Overseas Territories, Scotland, or Northern Ireland unless by special arrangement.
- A Home Office police forces *special constable* had (up until 1st April 2007) full police powers anywhere in the force area that they are appointed, and any directly neighbouring force areas, but have since had these powers extended to match those of a regular Home Office police forces constable.
- A *port police constable* has the full powers and privileges of a constable within the port estate and for a 1 mile radius. They do not necessarily have full police powers, as there are several recent enactments bestowing powers on police that are specific in their definitions as to exclude any constables other than those of Home Office police forces.

Traditionally, before the police service amalgamations of the 1960s, most towns and cities had their own police constabulary, and so did most counties. Usually the jurisdiction was limited to the bounds of a city, and a radius beyond, or to a county and neighbouring counties etc. As the police service developed, the Police Acts were enacted and these set the jurisdiction of a modern police officer to that which we have today- anywhere in England and Wales. As the legal systems are different in other parts of the UK, that is the jurisdictional limit of their powers.

The legislation that establishes the port police units has not changed since 1847, unlike that of "town police". The Independent Port Constabularies still have a jurisdictional limit that dates back to days when hardly anyone owned any form of transport, and so at that time a 1 mile limit to chase and apprehend a suspect was perfectly reasonable.

However, in the modern age when it is unusual for someone not to drive a motor vehicle, the situation is very different. The 1 mile limit is completely anachronistic and needs to be reviewed. This for no other reason that the Independent Port Constables, who frequently make arrests, are then required to convey their prisoner to a designated Home Office police station to be interviewed, charged, or released. The Home Office police forces have come to agreements with their respective Independent Port Constabularies, but by and large this requires the Independent Port Constabularies to arrest the suspect and transport them many miles to the nearest police station that is approved by the Home Office for the detention of prisoners⁶. This may necessitate a journey of many miles, and once the 1 mile limit is passed the port constable theoretically reverts to the status of an ordinary citizen. Whilst there are common law obligations upon ordinary citizens to 'assist the police' and they may lawfully affect arrests for any indictable offence, the sudden change in status from constable to citizen *en route* to a designated police station is highly undesirable.

A sensible option would be to apply the limit for regular Home Office police forces officers, namely England & Wales. In recognition of the fact that port constables frequently have to undertake enquiries some miles from the port, and conduct other constabulary related duties, (and indeed assist Home Office police forces colleagues when requested) there is a clear case for extending the jurisdiction. However, whether there is a robust argument for England & Wales wide power it remains to be discussed- perhaps the now abandoned 'own force area and contiguous areas' of the special constabularies would be sufficient.

⁶ Ironically, the BTP did not acquire their own "designated" police station until 2001.

Accountability of Independent Port Constabularies

There is no obvious disparity in accountability between a Home Office police forces and an Independent Port Constabularies. A consideration that occasionally crops up is whether the Independent Port Constabularies should submit to regular inspections by Her Majesties Inspector of Constabulary. Whilst in principal this is sound, the reality is that HMIC exists as a result of a need to demonstrate efficiency in the Home Office police forces. This is because the Home Office police forces are funded 1/3 by central government, 1/3 by local community charge, and 1/3 by a Home Office efficiency grant which is payable only upon award of a certificate of efficiency by HMIC. As none of the Independent Port Constabularies units receive a red cent in public money, and are funded entirely by the operating budgets of their parent port authorities, no efficiency grants are available to them and an HMIC inspection becomes a non-sense. There is also an assumption that HMIC are not resourced, and do not have the intent, to conduct such inspections. If so, any request for HMIC to conduct inspections would have a cost implication, and this would presumably have to be borne by the port authority or the DfT. That said the Independent Port Constabularies themselves are content to submit to such inspections if it were deemed necessary. The Independent Port Constabularies are now increasingly accountable (since 1st July 2004 and ISPS implementation) to DfT's TRANSEC, as they are key components in their port facility's security plan, which is approved and monitored by TRANSEC. TRANSEC has more to do, operationally speaking, with the Independent Port Constabularies units than any other DfT division or agency, and interacts routinely with the Chiefs of Port Police as they are invariably the main point of contact for ISPS matters and responsible for the practical application of TRANSEC security measures.

However, the key fact to bear in mind is that Independent Port Constabularies are directly accountable to a local authority (the port authority established under Statute) and public bodies (the port trustees or board) and is therefore open to all of the same scrutiny as any Home Office police forces via its Police Authority. The situation regarding port police is summarised by:

*"Port police forces are accountable to the relevant port authority by virtue of their establishment under Section 79 of the Harbours Docks and Piers Clauses Act 1847 or the incorporation of that provision into their own legislation."*⁷

The rise and fall and rise of Independent Port Constabularies units

The Independent Port Constabularies are enjoying a renaissance in the wake of high profile terrorist attacks since September the 11th; Some DfT figures show that in 1977 there were 1137 "statutory constables" working in ports, but of these 395 were BTP officers stationed at railheads (most major ports had integral railheads and many ports were operated directly by British Rail, and often there would be BTP constables and port police constables operating in the same vicinity). With the closure of ports, the decline in rail services and privatisation of rail services (and indeed the contraction of the BTP as a service) there are now no BTP officers permanently stationed in ports, although they are still responsible for policing rail heads.

It should also be borne in mind that the decline in numbers from 1977 to 2003 was primarily due to Associated British Ports (who operated the formerly Nationalised ports) corporately deciding not to have a dedicated port police resource. This was because ABP became a private company, and they felt that they could achieve better value for money by providing security through private contractors. In the early 1980's this may have been the case, however there are several examples outside ABP where this situation is being reversed- the Manchester Ship Canal is one. There was also the proportionate decline and reduction in operations of the port industry as a whole, and the shift from exporting towards importing and improvements in the speed at which high value goods can be unloaded, handled and dispatched from a port.

⁷ David Jamieson, Hansard, 7 Jun 2004 : Column 72W

Less employees and volume of traffic, combined with goods spending less time in the port, obviously means a lesser need for port constables.

The inestimable value of having port police constables on visible duty in ports has been recognised by senior DfT officials and Members of Parliament alike:

*"We recognise that port police forces such as that in Liverpool have an important role to play in the security of ports."*⁸

*"I wish to refer also to the Belfast Harbour police and to the Larne police, relatively small forces. I have raised in the House the importance of port police forces throughout the United Kingdom. From my own experience at the port of Tilbury—where we have a dedicated police force—I am aware how small and dedicated forces can be very useful."*⁹

It is manifestly desirable to have a permanent police presence in any port facility, and the fact remains that the traditional role of the port constable is to prevent crime and protect property, that being the property of the port and goods moving through it. The reason why historically those charged with this function have been bestowed with the office of constable is one of civil liberties; in the UK, it is not possible for private individuals to stop and search someone leaving port premises, to deter or detect crime, or if they suspect that a crime has been committed. That is the essence of why port constables have evolved, and still to this day is a significant element of their role. However, in modern times and with modern developments, their role has diversified into a wider range of enforcement activity, upholding the law in relation to disorder, alcohol, driving and other aspects that affect the safety of port workers and the public users of ports. However, the greatest value that they bring is in providing a visible 24/7/365 dedicated police presence- something that would be unlikely to be competitively matched by any Home Office police forces. They are also immediately recognisable as constables, a factor of great significance as they are often the first point of contact for foreigners arriving in the UK.

All ports have the potential ability to have their own independent port constabulary under enabling legislation, however as every port facility is unique in its operations, location, and constitution the current situation is that only 10 (albeit including some of the most significant and high-volume) ports have retained such a service. There is no doubt that the service they provide is invaluable from a counter-terrorism and general security perspective, and they also represent outstanding value for money as no public funds are expended on the service- it is met through operating costs of the ports themselves. It is arguable- but doubtful- that a comparable service could be provided by Home Office police forces, for a fee. But there are few if any Home Office police forces officers who would relish the prospect of permanent deployment to a port environment, and neither are they trained to do so at present. There is little evidence to suggest that the Home Office police forces has the appetite or capability to take on policing in place of the Independent Port Constabularies units and on the subject of BTP the following has already been said by John Spellar in Parliament:

"... [BTP] used to have jurisdictions in ports; they have not policed them for 15 years and have no current expertise in ports or airport policing. Furthermore, they do not have the facilities and manpower to do that. We have considered the issue, as have the Wheeler report and the ports review. Although it is true that seven ports have specialist police forces, it is worth pointing out that there are 500 ports in Great Britain. It might be more appropriate for those ports to be covered by local forces given the manpower implications, if nothing else. It is also worthwhile pointing out that many operations at ports are not particularly directed by static policing but by intelligence-led policing. Therefore, the location of staff could be a difficult issue. It is also true that at all ports, including those with their own forces, responsibility for tackling serious crime

⁸ David Jamieson, *Hansard*, 1 Mar 2005 : Column 211WH

⁹ Andrew Mackinlay Column Number: 15, *Draft Terrorism Act 2000 (Continuance of Part VII) Order 2003, Debate*

*still rests with the Home Office and—it is the appropriate phrase in this case—Home Office police forces.*¹⁰

It follows that if BTP do not have the expertise, resource or organisational ability to take on port policing, then it is highly improbable that any Home Office police forces would do so. Certainly for BTP to take on the task of providing day to day uniformed policing in ports they would have to fundamentally re-design their entire organisation and training regime; the BTP training at present is significantly shorter than Home Office police forces training, and they focus heavily on railway related byelaws and offences. In fact the title "British Transport Police" is a complete misnomer, as they only police railway systems and are funded almost exclusively by such organisations as London Underground and the Association of Train Operating Companies, and the DfT. Their name is simply a historical accident redolent of times when the UK had an entirely nationalised and integrated transport network; the forebears of the BTP, The British Transport Commission, actually policed Docks, railways and even British Road Services road freight depots.

¹⁰ *Railways and Transport Safety Bill, debate, Mr Spellar, 31 Mar 2003 : Column 711*