

# Railway Policing (Scotland) Bill

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## Delegated Powers Memorandum

### Introduction

1. This Memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Railway Policing (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

### Outline of Bill provisions

3. The Bill confers railway policing powers on the Police Service of Scotland ("Police Scotland") and the Scottish Police Authority ("SPA") – and removes functions from the British Transport Police Authority ("BTPA") and constables of the British Transport Police Force ("BTP") – in preparation for the integration of the BTP in Scotland into Police Scotland. Specifically, the Bill:

- enables the SPA to enter into railway policing agreements (RPAs) with railway operators to provide for policing in respect of the railways and railway property; sets out arrangements for the referral of disputes concerning RPAs to the Scottish Ministers; and adjusts the functions of the chief constable of Police Scotland to take account of the fact that arrangements for railway policing will be dealt with by RPAs;
- creates an obligation on the SPA to: set up a formal mechanism for it and the chief constable to engage regularly with railway

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operators about railway policing; work with railway operators and the chief constable in order to agree on an annual basis how railway policing is to be carried out; and make arrangements to obtain the views of railway users and other interested persons about the policing of the railways and railway property in Scotland;

- confers a power on constables of Police Scotland to enter specified railway property;
- removes functions conferred on the BTPA and constables of the BTP by Part 3 of the Railways and Transport Safety Act 2003 in or as regards Scotland.

## Rationale for subordinate legislation

4. In deciding whether provisions should be specified on the face of the Bill or left to subordinate legislation, we have carefully considered the importance of each matter against the need to:

- achieve the appropriate balance between the importance of the issue and the need to provide flexibility to respond to changing or unforeseen circumstances quickly, in light of experience, without the need for primary legislation; and
- ensure the proper use of parliamentary time is made.

5. It should be noted in this context that this Bill is an initial part of a larger programme of work needed to integrate the BTP in Scotland into Police Scotland. That larger programme will include subordinate legislation made in exercise of powers under the Scotland Act 1998 to deal with issues such as the transfer of staff, property and liabilities and the conferral of cross-border railway policing functions. A degree of flexibility is therefore also required should there be a need to respond to policy and legislative developments as part of that larger programme.

## Delegated Powers

Section 1 – Provision for policing of railways and railway property, inserted section 85C(1) – power to require

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## railway operators to enter into a railway policing agreement

Power conferred on: the Scottish Ministers

Power exercisable by: regulations

Parliamentary procedure: negative

Provision

6. Section 1 inserts sections 85A to 85M into the Police and Fire Reform (Scotland) Act 2012. These new sections put in place a framework for agreements as to how railways and railway property are to be policed. Under this framework the SPA is permitted to enter into Railway Policing Agreements (RPAs) with railway operators which specify that policing services are to be provided by the SPA to the railway operator and that the railway operator is to pay for those services. Inserted section 85C gives Scottish Ministers power to require specified railway operators – or descriptions of railway operators – to enter into an RPA.

Reason for taking this power

7. The policy intention underpinning the provisions on RPAs is to maintain the current approach of there being a direct relationship between those providing railway policing and the railway industry in Scotland. This builds on the relationship between the BTP and the railway industry established by the Railways and Transport Safety Act 2003 Act (the 2003 Act). An important aspect of the 2003 Act approach is its provision requiring railway operators specified by the Secretary of State to enter into a Police Services Agreement, the equivalent under the 2003 Act of an RPA. To ensure that this relationship is maintained following integration of the BTP in Scotland into Police Scotland, a similar power is required in relation to the new RPAs.

8. Additionally, it is an underpinning principle that the income received from the rail industry must equal expenditure on railway policing in Scotland. This direct funding of railway policing by the railway industry is also achieved through the RPA approach. Again, this is similar to the approach taken under the 2003 Act.

9. Given the range of railway operators in existence from time to time, and the variety in the nature and scale of functions those operators discharge, the obligation will require to be selective in its application. This will be contingent on factors such as the type of operations an operator

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undertakes, the type of licence held by an operator and the extent of an operator's activity in Scotland (for cross-border services). The operators on whom the obligation should be imposed may change from time to time. It is therefore considered necessary to impose the obligation selectively by subordinate legislation as this allows for much more precision in specifying who is affected. Read with the consultation requirement, it also ensures that new operators are consulted before any obligation is imposed.

#### Choice of procedure

10. This power permits the Scottish Ministers to determine that particular railway operators are to be under a duty to enter into RPAs with the SPA. Nothing in the exercise of the power would entail a change to the provisions of the Act and it requires to be capable of being exercised expeditiously to respond to changing circumstances which may be of a largely administrative nature.

11. The power is likely initially to be exercised in a way which broadly maintains the current arrangements for mandatory policing agreements so far as operators operating in Scotland are concerned. Any subsequent exercise of the power is likely to be to effect changes of an administrative nature or to reflect changes in factual circumstances which require to be properly reflected in the arrangements for funding railway policing. For example, an operator may change its name, a new operator may assume the functions of another or new operating licences may be granted which require to be taken account of in the RPA regime. While the power is unlikely to require to be exercised on an emergency basis, it may require to be exercised relatively expeditiously to respond to changing circumstances.

12. Given the nature of the provision to be made (including its dependency on external factors) and the possible need to act relatively quickly, the negative procedure is considered to strike the correct balance between the proper level of Parliamentary scrutiny and the appropriate use of Parliamentary time. The inclusion of a consultation requirement provides a further safeguard to ensure that the operator or operators affected have an opportunity to make representations to the Scottish Ministers.

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## Section 6 – Ancillary provision

Power conferred on: the Scottish Ministers

Power exercisable by: regulations

Parliamentary procedure: affirmative if amending primary legislation, otherwise negative

Provision

13. Section 6 of the Bill enables the Scottish Ministers to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with, or for giving full effect to, the Bill.

Reason for taking this power

14. This power is necessary to allow flexibility when commencing provisions in the Bill or addressing circumstances that may arise in light of experience on the operation of the Act. This is particularly relevant here given that the Bill fits within a larger ongoing programme of work to integrate the BTP in Scotland into Police Scotland over a period of a number of years.

15. The power is limited to the extent that it can only be used if the Scottish Ministers consider it appropriate for the purposes of, in connection with, or for giving full effect to the Bill. Several of the Bill's provisions are inserted into or interact with other processes or legislation. While the Scottish Government has given careful consideration to such interaction, there may be unforeseen matters which require the assistance of this ancillary power in order to ensure the proper effect of the Bill is realised. For example, there may be a need for a saving or transitional provision in relation to an ongoing dispute (which has not yet arisen) under a Police Service Agreement under the 2003 Act which affects the start of an RPA, or perhaps some adjustment to the Police and Fire Reform (Act) 2012 to ensure that the new railway functions operate as efficiently as possible post-integration.

Choice of procedure

16. Regulations made under this section which contain a provision which adds to, omits or replaces any part of an Act are subject to affirmative procedure. Otherwise, regulations made under this section are subject to negative procedure. This approach is normal for ancillary powers of this type.

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## Section 7 – Commencement

Power conferred on: the Scottish Ministers

Power exercisable by: regulations

Parliamentary procedure: laid only

Provision

17. Section 7 of the Bill enables the Scottish Ministers to make regulations appointing days on which the provisions in the Bill come into force (other than sections 6, 7 and 8 which come into force on the day after Royal Assent). Regulations may include transitional, transitory or saving provision.

Reason for taking this power

18. The power is necessary to enable the Scottish Ministers to commence the provisions in the Bill appropriately by allowing them to take into account the existing law and provide for the transition to the system established by those provisions.

Choice of procedure

19. The power is subject to the default laying requirement under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010. This is typical for commencement regulations. The nature of the laying requirement means that the Scottish Government anticipates the use of this power to effect straightforward transitional, transitory or saving provisions only.

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