

This document relates to the Railway Policing (Scotland) Bill (SP Bill 2) as introduced in the Scottish Parliament on 8 December 2016

Railway Policing (Scotland) Bill

Policy memorandum

Introduction

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Railway Policing (Scotland) Bill introduced in the Scottish Parliament on 8 December 2016. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament.

2. The following other accompanying documents are published separately:

- statements on legislative competence by the Presiding Officer and the Cabinet Secretary for Justice (Michael Matheson MSP) (SP Bill 2–LC);
- a Financial Memorandum (SP Bill 2–FM);
- Explanatory Notes (SP Bill 2–EN).

3. A glossary of the expressions and abbreviations used in this Memorandum can be found at the end.

Policy objective of the Bill

Overview

4. The policy objective of the Bill is to pave the way for the integration of railway policing into the Police Service of Scotland (Police Scotland) by (a) providing the Scottish Police Authority (SPA) and Police Scotland with new powers in relation to the policing of railways and railway property and (b) removing powers in relation to such policing in Scotland from the British Transport Police Force (BTP) and the British Transport Police Authority (BTPA).

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5. Scotland's railways are a vital component of Scotland's national infrastructure, and the British Transport Police provides a specialist railway policing function which is highly valued by the Scottish Government, the rail industry, railways staff and rail passengers. In integrating railway policing into Police Scotland, there will be a strong focus on maintaining railway policing expertise within the broader Police Scotland structure, ensuring that railway users and staff in Scotland continue to be kept safe, and minimising the impacts of incidents on the operation of the railway network.

6. The key benefits that are expected to flow from the integration of railway policing functions into Police Scotland are:

- ensuring that railway policing in Scotland is accountable, through the Chief Constable and the SPA, to the people of Scotland;
- enhancing railway policing in Scotland through direct access to the specialist resources of Police Scotland;
- 'future-proofing' the infrastructure policing model in Scotland against changes that may arise from the review of infrastructure policing in England and Wales.

7. Railway policing has the following distinct features which will be maintained and built upon:

- specialist railway policing expertise and capacity will be maintained and protected within the broader structure of Police Scotland. This will retain the skills, knowledge and experience that BTP officers and staff have built and embed railway policing within the wider local, specialist and national resources of Police Scotland;
- the railway industry's voice in Scotland's railway policing will be maintained and strengthened with a clear mechanism for regular engagement to ensure transparency for railway operators.

8. The UK Government's Strategic Defence and Security Review 2015 stated that:

"Responsibilities for infrastructure policing are shared across a number of organisations with different levels of capability and capacity, and different arrangements for funding, oversight, regulation and legislation. We intend to integrate infrastructure policing further and we will review options to do this."

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9. The UK Government's Infrastructure Policing Review is expected to report in late 2016. If the BTP is to be integrated into a wider infrastructure policing structure in England and Wales, Scotland would miss out on the benefits of integrating infrastructure policing functions.

Implementation process

10. The Bill sets the framework for devolved railway policing in Scotland, as a necessary first step towards the integration of railway policing into Police Scotland. This will enable a substantial programme of work with key partners following the passage of the Bill to deliver integration in practice. Key legislative elements of this in both the Scottish Parliament and Westminster are summarised in the Annex to this Memorandum. These subsequent steps will include more detailed legislative provisions to underpin seamless railway policing on cross-border services and the transition of officers and staff from the BTP in Scotland into Police Scotland.

11. The overall programme of work which underpins the Bill and subsequent work is being taken forward through a Joint Programme Board (JPB) bringing together the Scottish Government with key partners in delivering the integration of the BTP in Scotland into Police Scotland – in particular, the UK Government Department for Transport (DfT), BTPA, and the SPA. The aims of the JPB, as agreed in its Terms of Reference, are: to provide joint leadership and partnership working in order to deliver the shared objectives of the UK and Scottish Governments for the devolution of railway policing in Scotland; and to deliver the Scottish Government's stated aim of integrating the BTP in Scotland into Police Scotland.

12. In addition to transferring legislative competence over railway policing, the Scotland Act 2016 also designated the BTPA and senior officers of the BTP as cross-border public authorities for the purposes of sections 88 to 90 of the Scotland Act 1998. Despite this, restrictions remain on the ability of the Scottish Ministers and the Scottish Parliament to exercise functions in relation to those authorities (for example, to transfer staff and property). Some changes to the law of England and Wales will also be required to give full effect to integration (for example, on cross-border policing of the railways). There is a need for some aspects of this policy to be delivered through UK legislation, most likely in exercise of subordinate legislation-making powers under the Scotland Act 1998. This will include provision on the transfer of staff, assets and liabilities and

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provision on cross-border policing, as well as consequential changes in reserved areas or to the law of England and Wales.

13. This Policy Memorandum aims to ensure that the Scottish Parliament has the opportunity to consider these issues in the round by setting out clear intentions for that work, together with an explanation of how and when the details will be developed through the Scottish Government's joint work with partner organisations and those most directly concerned. Certain elements of that work will also be subject to direct scrutiny by the Scottish Parliament in due course (as Orders under section 90 of the Scotland Act 1998 to transfer property and liabilities are subject to scrutiny in both the UK and Scottish Parliaments.) The Annex to this Memorandum sets out a summary of the Scottish Government's current plan as to the overall legislative framework needed to deliver integration.

14. Through the JPB, the Scottish Government and its key partners are working in partnership towards a target date for completion of the overall programme of 1st April 2019, on which date the officers and staff of the BTP in Scotland will transfer into Police Scotland, with Police Scotland assuming responsibility for railway policing in Scotland. Until that transition takes effect, railway policing services in Scotland will continue to be provided by the BTP on the same basis as at present. However, there are some developments that could occur in the intervening period. These include changes that could arise from the UK Government's Infrastructure Policing Review, which will have a bearing on the future of the BTP in England and Wales, and therefore the interface between policing in Scotland and the rest of the UK. The timetable for integration will therefore be kept under review.

Background

15. On 27 November 2014, the Smith Commission, endorsed by all Scottish political parties represented within the Parliament, published its report detailing Heads of Agreement with recommendations for further devolution of powers to the Scottish Parliament. The report set out that the functions of the BTP in Scotland should be devolved to the Scottish Parliament. The Scotland Act 2016 gives effect to the Smith Commission recommendations, including transferring legislative competence in relation to the policing of railways and railway property in Scotland to the Scottish Parliament.

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16. The BTP was given statutory jurisdiction by the Railways and Transport Safety Act 2003 (the 2003 Act) to act as a railway police service across Great Britain¹, accountable to the BTP Chief Constable, the BTPA, and through them to the UK Parliament. The BTP polices Britain's railways, providing a service to rail operators, their staff and passengers. The range of duties includes the protection of the railway environment, ensuring the safety of passengers both at stations and on trains, and keeping levels of disruption, crime and the fear of crime as low as possible.

17. The BTP consists of three regional divisions, one of which covers Scotland as a whole, as well as a Force Headquarters in London. The Scottish Division of the BTP is known within the BTP structure as D Division and covers the rail network throughout Scotland and the Glasgow Subway network. BTP D Division has responsibility for policing around 2,800 kilometres of track and 358 stations, and, in 2016-17, has 284 (full-time equivalent) police officers, special officers and civilian staff. Its headquarters is in Glasgow, with a presence at 14 other leased premises at railway stations around Scotland.

18. Around 93 million passenger journeys are made in Scotland each year and demand is growing. Significantly, about 91% of rail travel in Scotland (freight and passenger) is within Scotland. Around 8 million passenger journeys and 2 million tonnes of freight use the two cross-border rail routes. Passenger satisfaction as recorded in the National Rail Passenger Survey conducted twice a year by Transport Focus is consistently 5-7% above the UK average for passenger perception of personal safety and security while on trains and at stations, and passenger numbers have increased by over 45% since 2005-06.

19. The Scottish Government is the principal funder of railway infrastructure and service provision in Scotland, investing over £700 million per annum, and is responsible for setting Scotland's long-term vision for rail. This investment includes franchise payments, subsidies and other funding for Abellio ScotRail (ASR), Serco Caledonian Sleepers Limited (SCSL) and Network Rail. The cost of railway policing in Scotland is currently over £21 million. The cost to ASR, SCSL and Network Rail (which together make up approximately 97% of the cost of railway policing in Scotland), is effectively supported (in part) by these franchise payments and subsidies from the Scottish Government, although cross-border

¹ i.e. England and Wales, and Scotland, but not in Northern Ireland.

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franchises let by the UK Government Department for Transport also contribute to these costs.

20. The BTP in Scotland is funded through contributions from the railway industry, whereby Network Rail, Train Operating Companies and Freight Operating Companies enter into a Police Services Agreement (PSA) with the BTPA, under which they pay for the policing services they receive. For example, both ASR and SCSL (the ScotRail and Sleeper franchisees) have entered into PSAs for the new passenger service franchises awarded by the Scottish Government which commenced on 1 April 2015.

21. The Scottish Government proposes to maintain the current direct relationship between railway policing and the railway industry in Scotland through Railway Policing Agreements (RPAs), with services provided by Police Scotland rather than the BTP. These RPAs will build on the model of the existing PSAs with the railway industry, with suitable adaptations to align them with these new institutional arrangements for Scotland. As with the PSA approach, the intention of the RPA framework proposed by the Bill is to give the industry a picture of the service they can expect to receive in relation to railway policing and, at the same time, provide clarity over costs for each operator and Network Rail. The detailed form and content of RPAs will be developed in consultation with the railway industry in Scotland. The costs of railway policing in Scotland will continue to be fully funded by the rail industry through the new RPA framework.

22. The Police and Fire Reform (Scotland) Act 2012 (the 2012 Act) provides the statutory basis for policing in Scotland, establishing the SPA and Police Scotland. Police Scotland is accountable to the SPA and subject to parliamentary and local government scrutiny arrangements. The SPA's main statutory functions under the 2012 Act are to: maintain Police Scotland; promote the statutory policing principles; promote and support continuous improvement in the policing of Scotland; keep the policing of Scotland under review; and hold the chief constable to account for the policing of Scotland.

Provisions of the Bill

23. The Bill confers railway policing powers on Police Scotland and the SPA in preparation for the integration of the BTP in Scotland into Police Scotland. Specifically, the Bill:

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- 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 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 such as trade unions about railway policing 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 2003 Act in or as regards Scotland.

24. The policies to be achieved through each of these provisions are set out below. A more detailed explanation of each of the sections of the Bill can be found in the Explanatory Notes.

Railway policing agreements

25. The 2003 Act enables the BTPA to enter into agreements with railway operators for the provision of railway policing services. These 'Police Services Agreements' (PSAs) on the one hand provide for the BTP to carry out a certain level of police functions on railways and railway property, and on the other hand provide for payments to be made by railway operators to the BTPA to cover the cost of those functions.

26. As set out in paragraph 21 above, the Scottish Government's policy is to continue the direct relationship between the railway industry and railway policing following integration, through agreements between the SPA and railway operators covering the provision of railway policing services and payments for the cost of those services. Section 1 of the Bill therefore inserts a new Chapter 12A into Part 1 of the 2012 Act, establishing a legislative framework for these new agreements. To recognise the unique status of this arrangement, and to avoid potential confusion with the Police

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Service Agreements covering additional policing for events as set out in the 2012 Act, these will be termed 'Railway Policing Agreements' (RPAs).

27. As with the 2003 Act, there is to be a power to compel railway operators to enter into RPAs. The power is conferred on the Scottish Ministers by new section 85C of the 2012 Act, which allows them to specify in regulations the operators who are to be subject to that requirement. Where disputes arise in relation to RPAs, new sections 85D to 85G of the 2012 Act will permit those disputes to be referred to the Scottish Ministers and determined either by the Scottish Ministers or by a suitable person appointed by the Scottish Ministers as follows. Disputes about the terms to be included in RPAs may be determined by the Scottish Ministers or by a suitable person appointed by the Scottish Ministers. Given that the Scottish Ministers have a role in the conclusion of RPAs, disputes about the variation, interpretation or operation of RPAs which have already been concluded must be determined by a suitable person appointed by the Scottish Ministers rather than by the Scottish Ministers themselves.

Engagement with Railway Operators

28. The Scottish Government believes that devolution of railway policing provides the opportunity to build on and enhance the direct relationship between the railway industry and railway policing by establishing an engagement mechanism to ensure that the railway industry has a formal voice through which it can reach agreement with the SPA on the services, performance and cost of railway policing in Scotland. The Railway Policing (Scotland) Bill therefore places the SPA under an obligation to establish a formal mechanism to engage regularly with railway operators and the Chief Constable on railway policing, and to require the SPA to invite participation in that forum from all railway operators operating in Scotland (whether wholly or on a cross-border basis) who have entered into an RPA or who are required to do so.

29. The purpose of this engagement will be for the SPA to discuss and seek to agree with railway operators on:

- the priorities and objectives for the policing of the railways and railway property in Scotland;
- the proposed arrangements for the policing of railways and railway property in order to meet those priorities and objectives;

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- the means by which the performance of Police Scotland and the SPA in meeting those priorities and achieving those objectives will be assessed; and
- the estimated cost of those arrangements.

30. There are of course many other communities and organisations with a strong interest in railway policing in Scotland, notably passengers, railway company employees and trade unions, and the officers and staff who carry out railway policing functions. The Bill therefore places a separate duty on the SPA to take such steps as it considers appropriate to obtain the views of a range of interests on the policing of the railways and railway property.

Power of entry in respect of railway property

31. The existing powers of Police Scotland constables will for the most part be sufficient to enable constables assigned to railway policing duties post-integration to continue to perform the same railway policing duties as those currently performed by the BTP. There is, however, one unique power conferred by the 2003 Act on members of the BTP which allows those members to enter specified railway property without a warrant, using reasonable force if necessary and irrespective of whether an offence has been committed. The rationale for that approach is that it enables BTP constables to carry out routine patrols of those parts of the railway to which the public normally have access, such as stations and trains, as well as areas, such as the track, that the public may access unlawfully and pose a threat to railway safety without the need for any special permission (such as a warrant or the invitation of the occupier) or for any particular incident to have occurred.

32. In order to meet this operational railway policing requirement following integration of the BTP in Scotland into Police Scotland, section 3 of the Bill provides this power of entry to constables of Police Scotland by the insertion of a new section 20A into the 2012 Act. To ensure that this power is no wider than is necessary to meet the operational requirement described above, the power is specifically constrained to certain specified railway property. That property is anything which is or forms part of a track, a network, a station, a light maintenance depot, or a railway vehicle which is located on or in any of the preceding types of property. Property may be entered in exercise of this power only if it is used for or in connection with the provision of railway services. No private dwelling may be entered in

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exercise of this power, nor any railway property used for some purpose other than the provision of railway services.

33. The power is conferred on all constables of Police Scotland and the decision as to deployment will rest with the chief constable. In making deployment decisions, the chief constable will need to consider the extent to which individual constables have appropriate expertise and training for the environment they are operating in, particularly where this may involve hazardous environments such as railway tracks.

Functions of BTPA and BTP

34. Part 3 of the 2003 Act establishes the BTPA and the BTP in statute. It confers on the BTPA the necessary functions to establish and maintain a police force for the policing of railways and railway property, and to enter into agreements with railway operators which determine how that policing is to be carried out and how much it is to cost. It confers functions on the BTP which allow it to police the railways in accordance with those agreements. Since the policy objective of the Bill is that railway policing in Scotland is to be integrated into Police Scotland and the SPA, neither the BTPA nor the BTP will require to have any of their existing functions under the 2003 Act in Scotland following integration. Sections 4 and 5 of the Bill therefore remove those functions.

35. Although about 91% of rail travel in Scotland (freight and passenger) remains within Scotland, there are around 8 million passenger journeys and 2 million tonnes of freight using the two cross-border rail routes, and it is therefore important to put in place both legislative and non-legislative measures specifically to ensure the continuation of effective railway policing on cross-border routes.

36. BTP officers in Scotland and in England have a strong track record of joint working on cross-border routes, and in tackling crime affecting the railway network on both sides of the border. This expertise already involves working across the two separate legal systems, and in partnership with the different territorial police forces.

37. Similarly, Police Scotland already has strong relationships and agreements with the BTP and police services in the other parts of the UK, with well-established processes for joint working across regional and functional boundaries.

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38. The Scottish Government wants to ensure that these successful and established mechanisms for policing across borders are applied to future aspects of railway policing. This involves it working in partnership with the UK Government, the BTP, the BTPA, Police Scotland and other key stakeholders to ensure a seamless transition of railway policing from the BTP to Police Scotland. This will include ensuring that railway policing continues to operate effectively on train services crossing the border in both directions.

39. In order to deliver these objectives, the BTPA and the BTP will require to be provided with some functions in Scotland post-integration to allow for the cross-border policing of railways and railway property in specific circumstances, such as providing continuity of policing operations on those services which cross the border. Police Scotland and the SPA will require to be provided with some functions in relation to railways and railway property in England and Wales for similar reasons. It is intended that these matters will be dealt with in due course in subordinate legislation made under the Scotland Act 1998 given the cross-border nature of the issue.

Key benefits

Improved accountability

40. The BTP is accountable through the BTPA, a Cross-Border Public Authority (CBPA); while Police Scotland is accountable through the SPA, a Scottish Public Body. The Scottish Government believes that there is little sense in having two separate accountability mechanisms for policing in Scotland, and a Scottish Public Body provides a much more direct and effective form of accountability to the Scottish Parliament than a CBPA. Adding railway policing functions would be consistent with the SPA's current statutory duties under the 2012 Act and will ensure a railway policing function within Police Scotland that is fully accountable to the people of Scotland and the Scottish Parliament.

41. Experience of the devolution of responsibility for the specification and funding of the rail industry in Scotland provides a clear example of transferring and managing responsibility for Scotland's infrastructure effectively, while maintaining appropriate arrangements for cross-border operations. Successive governments in Scotland have used these responsibilities to invest in new railway lines, new rolling stock and improved service levels.

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An integrated approach to infrastructure policing

42. Police Scotland provides a national approach to policing across Scotland. Placing all of the major policing functions in Scotland under a single command structure will provide a unified and integrated service for policing Scotland's transport infrastructure, bringing specialist railway policing alongside policing at airports and Scotland's road network.

43. The establishment of the infrastructure policing review in England and Wales suggests that the direction of travel there is towards a more integrated infrastructure policing model with simplified accountabilities and command structures. The integration of railway policing functions within Police Scotland will deliver exactly these benefits in Scotland.

More effective operational policing

44. Police Scotland has indicated that its intention is to maintain a specialist railway policing function within the broader Police Scotland structure. In a letter of 7 June 2016 to the Cabinet Secretary for Justice, the chief constable of Police Scotland stated that:

“In recognising the vast expertise of British Transport Police in policing the railway community of Scotland and to maintain public and industry confidence of continued excellence, I would see the maintenance of a specialist railway policing function within a broader Police Scotland structure. Whilst a consultation may inform the position in more detail, obvious options would be to have a specialist railway policing function as part of either Operational Support Division which currently owns the portfolios for Roads Policing, Events and Emergency Planning and liaison with Transport Scotland or to align railway policing with Borders Policing Command.”

45. This will retain the specialist skills, knowledge and experience that BTP officers and staff have built and will embed railway policing within the wider local, specialist and national resources of Police Scotland, ensuring that the policing of Scotland's transport infrastructure is well equipped to meet current and emerging threats. Integration also has the potential to strengthen the contribution of railway policing to community safety, for example in the prevention and response to hate crime and sexual harassment.

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46. Following integration, railway policing will gain readily available access to specialist operational support resources in Police Scotland. Integration will provide a single police service in Scotland which can share information quickly through integrated systems, ensuring a fully joined-up process to identify links between crime and criminals on our railways and wider communities.

47. Currently, following their initial training at the Scottish Police College at Tulliallan, BTP and Police Scotland officers then train independently, although they deploy together for significant events. Integration will enable joint police training with a focus on threats and risks tailored to Scotland's needs and priorities.

48. The BTP and Police Scotland already work together regularly for the policing of major events in Scotland. However, officers often work to different command teams. Integration will ensure a single command is exercised to achieve a clearly defined set of operational policing objectives and will also allow for policing best practice to be identified and implemented.

Consultation

49. The Scottish Government's consultation on the approach to be taken in the Bill and wider implementation programme on the integration of the British Transport Police in Scotland into Police Scotland ran from June to August 2016. The consultation can be viewed at:
<https://consult.scotland.gov.uk/police-division/transport-police>.

50. A total of 137 responses were received, 107 from individuals and 30 from organisations. A significant number of those responding to the consultation were opposed to the integration of the BTP in Scotland into Police Scotland. Concerns expressed were that integration would impact negatively on cross-border services; would reduce competence in tackling major UK issues such as terrorism; would reduce the safety of rail passengers and staff with possible reduction in officer posts; could increase costs for train operators; would negatively impact on the terms and conditions of service of BTP officers and staff, and could hamper career development and progression. Each of these concerns is addressed in paragraphs 53 to 65 below.

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51. Overall, the majority of these concerns appear to relate to assumptions that consultees have made about the shape of railway policing in Scotland following integration. In particular, the assumption in most responses which raised these concerns was that the budget and number of railway policing officers would be reduced, and that a railway policing specialism would not be maintained within Police Scotland. These points are addressed in the following sections.

52. Respondents to the consultation also identified a range of potential benefits of integration, which included:

- a reduction in emergency response times to remote areas;
- strengthened national and local scrutiny and accountability; and
- a greater contribution to local community safety responses.

Cross-border policing

53. BTP officers in Scotland and in England have a strong track record of joint working on cross-border routes, and in tackling crime affecting the railway network on both sides of the border. This expertise already involves working across the two separate legal systems, and in partnership with different territorial police forces. Similarly, Police Scotland already has strong relationships and agreements with the BTP and police services in the other parts of the UK, with well-established processes for joint working across regional and functional boundaries.

54. The Scottish Government is absolutely committed to ensuring that effective arrangements and statutory powers are in place to allow effective cross-border policing of the railways. Significant progress has already been made in joint working with the UK Government, the BTP, the BTPA, Police Scotland and other key stakeholders to identify where changes to legislation will be required in order to deliver this. Specifically, the Scottish Government has identified that secondary legislation in the UK Parliament is likely to be the most effective means of delivering this, given the inherently cross-jurisdictional nature of the provisions that will be required to underpin continuity of policing operations on those services which cross the border. As is the case for existing policing arrangements across the border for other modes of transport, operational agreements between Police Scotland and the BTP will also play a part in delivering the shared objective of seamless cross-border policing.

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55. Following integration, the Scottish Government fully expects that railway policing in Scotland will maintain the close working relationship it currently enjoys with the BTP in England and Wales, and the level of railway policing service that passengers and goods travelling across the border currently receive.

Officer numbers and safety

56. The Scottish Government's plans are based on an assumption that the level of railway policing service will remain the same following integration, and this assumption is built into the projections made within the financial memorandum for the Bill. More specifically, those costings are based on continuing with exactly the same numbers and rank/grade of officers and staff in Scotland as at present.

57. As highlighted at paragraph 44 above, the chief constable has stated clearly that he anticipates maintaining a specialist railway policing function within the broader Police Scotland structure which will retain the skills, knowledge and experience of BTP officers and staff in ensuring the safety of passengers and keeping levels of disruption, crime and the fear of crime as low as possible.

Operator costs

58. Current BTPA cost estimates are based on an assumption that annual railway policing costs should not rise by more than the cost of RPI inflation, and the Scottish Government is basing its future projections on this approach. The costs of railway policing in Scotland currently include an element for corporate functions of the BTP and the BTPA. The Scottish Government expects that corporate functions will be provided by Police Scotland in future, although Police Scotland may continue to contract with the BTP or the BTPA for some services such as specialist training. While additional capacity will be required in Police Scotland to deliver some of these functions, the Scottish Government believes there is scope for efficiencies in corporate functions through integration with Police Scotland.

Terms and conditions of service

59. The terms and conditions of service of BTP officers and staff are different to those of constables of Police Scotland and staff employed by SPA. The Scottish Government recognises the importance of providing early clarity to BTP officers and staff on their terms and conditions following integration and will engage with officer and staff associations and

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representatives in order to determine a way forward that provides appropriate protections. The Scottish Government considers that the transfer is likely to fall within the exclusion in regulation 3(5) of the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006², because it is a transfer of administrative functions between public authorities. Accordingly, it is not a “relevant transfer” for the purposes of the TUPE Regulations and those Regulations therefore do not apply. The Scottish Government intends, however, to abide by the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (COSOP), in particular by ensuring so far as possible that (1) the transfer (including terms of transfer) is effected by legislation and (2) the staff transferred are treated no less favourably than they would have been had TUPE applied. This will provide certainty as to the terms on which staff are transferred.

60. BTP Officers and staff also have separate occupational pension provision to Police Scotland officers and staff. In a similar approach to that intended for terms and conditions, the Scottish Government will aim to ensure that, upon integration, pension entitlement is maintained without detriment. This will be achieved by considering options in line with the Scottish Government’s established principle that public service pensions should be affordable, sustainable and fair.

61. In pursuit of this principle, there will be full engagement with officers and staff through their respective representative bodies, as well as the BTPA and scheme trustees to ensure the best outcome for all.

62. Broadly, options include maintaining current provisions as far as possible, or undertaking a transfer of rights into existing Police Scotland arrangements with no loss of accrued benefit. However, there are many aspects of both these options that require further analysis and it is natural that all groups will seek advice during the process of discussions. The Scottish Government will refer to pension and actuarial experts to ensure the arrangements are fair for officers, staff and the Scottish taxpayer.

63. It is hoped that agreement on preferred options will be reached well in advance of integration taking place to give officers and staff the reassurance they need for the future. Draft legislation to implement the

² The TUPE Regulations implement the European Council Directive 2001/23/EC relating to the safeguarding of employees’ rights in the event of transfers of undertakings or businesses.

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agreement will be open to consultation, and individuals and groups will have the opportunity to respond in order to ensure that the legislation meets the requirements of that agreement.

Career development and progression

64. Police Scotland has set out its intention to maintain a specialist railway policing function within the broader Police Scotland function and has made clear that they will honour the significant personal commitment that BTP officers and staff in Scotland have made to choose a career in railway policing on their integration into Police Scotland.

65. In his letter of 7 June 2016 to the Cabinet Secretary for Justice, the chief constable of Police Scotland stated that:

“I recognise the importance of providing assurance that following the integration of British Transport Police officers and staff into Police Scotland, there will be a level of ‘protection’ afforded to allow their retention within the business area of ‘Railways Policing,’ however this will not inhibit the voluntary movement of officers between this function and other Police Scotland business areas to promote personal and corporate development.”

Alternative approaches

66. Some of those responding to the consultation proposed an alternative approach to giving effect to the devolution of the functions of the BTP in Scotland through the Scotland Act 2016 that would involve the BTP continuing to provide railway policing services in Scotland on an ongoing basis, with some form of accountability to the Scottish Parliament and/or the SPA in addition to their existing UK-wide governance structures.

67. Whilst the Scottish Government recognises that this approach might appear to offer the advantage of a level of continuity of service and stability in the short-term for railway policing officers and staff, there are a number of reasons why this approach is not the preferred option for devolved railway policing in Scotland in the medium to long term.

68. None of the other options deliver a single command structure for policing in Scotland, with the benefits that provides for policing operations which affect the railways as well as the wider community. Those proposing that the BTP should be accountable to governance structures in Scotland in

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addition to its existing ones at UK level have offered little detail as to how that could be made to work in practice, and the Scottish Government believes that the current accountability arrangements for the SPA and Police Scotland to the Scottish Parliament are much stronger and more effective than could be delivered within a CBPA structure. A CBPA-based solution risks creating multiple lines of accountability for the BTP rather than the simpler and more direct accountability that will be provided by integration with Police Scotland.

69. The Scottish Government believes there is no ‘status quo’ option available, as not only is railway policing in Scotland now a devolved matter, but the UK Government has also announced its own intention to integrate infrastructure policing further, setting out a commitment in its Strategic Defence & Security Review 2015 to review options to do this. If the BTP is to be integrated into a wider infrastructure policing structure in England and Wales, Scotland would miss out on the benefits of integrating infrastructure policing functions. This result would occur because the provision of railway policing in Scotland would be aligned with wider transport infrastructure policing for England and Wales, but separated from all other aspects of infrastructure policing in Scotland (given Police Scotland’s responsibility for the policing of Scotland’s trunk road network, airports and ports).

70. A stand-alone railway policing function for Scotland, integrated neither into Scotland’s policing structures nor into England and Wales infrastructure policing, would be a force of little over 200 officers, and would lack the capability and scale needed to fulfil modern policing requirements. As set out in paragraphs 44 to 48, significant operational benefits of integration include readily available access to specialist operational support resources, the ability to share information quickly through integrated systems, and the ability to exercise a single command to achieve a clearly defined set of operational policing objectives. A small stand-alone railway policing function for Scotland would also be likely to require a higher level of administrative overheads, and consequently cost for the railway industry, than could be achieved as a specialist function within a wider policing structure.

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Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal opportunities

71. The consultation invited views on any likely impacts of integration on particular groups of people, with reference to the 'protected characteristics' of: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; and sex and sexual orientation.

72. Of those respondents who suggested any potential impacts, these were primarily that the travelling public and the railway workforce, which would include those with protected characteristics, could be impacted negatively if the level of railway policing diminishes; or similarly, that existing initiatives or expertise in areas such as suicide prevention and text reporting of incidents could be discontinued.

73. As set out in paragraph 56 above, the Scottish Government's plans for the integration of the BTP in Scotland into Police Scotland are based on delivering the same level of railway policing service, and the maintenance of a specialist railway policing function within the broader Police Scotland structure. As such, there is no intention for the level of railway policing to diminish, or for valued initiatives and areas of expertise to be discontinued.

74. Some respondents also suggested that older members of BTP staff and those already retired and receiving pensions may be impacted by integration if pensions are changed to their detriment, or that staff with caring responsibilities would be potentially disadvantaged if required to relocate or change their working patterns.

75. The Scottish Government approach to the terms and conditions of transfer is set out in paragraphs 59 to 63 above, and it will abide by the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (COSOP).

76. The Office of the Scottish Information Commissioner highlighted in responding to the consultation that data protection and privacy issues will be an important consideration in developing approaches to transferring data in the course of the integration of the BTP in Scotland into Police

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Scotland. The Legislative Map in the Annex shows the stages at which legislative provision for the transfer of property and liabilities, and officer and staff transfer, will follow on from the Railway Policing (Scotland) Bill. The Scottish Government, working with its range of partners through the JPB, will ensure that the Data Protection Principles are applied to its programme of work over the years ahead.

Human rights

77. Section 1 of the Bill inserts new sections into the 2012 Act which set out a process for the determination of disputes about RPAs, permitting those disputes to be referred to the Scottish Ministers for a determination (either by the Scottish Ministers themselves or by a person appointed by them for that purpose). This process may entail the determination of civil rights and obligations which in turn may engage Article 6 of the European Convention on Human Rights (ECHR) which guarantees a fair hearing in respect of the determination of such rights and obligations. To the extent that Article 6 is engaged, the Scottish Government considers that the process contains adequate safeguards in respect of Article 6 rights, including the right of parties to the dispute to make representations and the right of appeal against any determination to the Court of Session (section 85H).

78. Section 3 of the Bill inserts a new section 20A into the 2012 Act conferring on constables of Police Scotland a power to enter specified railway property without a warrant and using reasonable force if necessary. Any power of entry potentially engages Article 8 of the ECHR which protects the right to private and family life, home and correspondence.

79. The Scottish Government considers that the power of entry arguably does not constitute an interference with Article 8 protections because those protections are not engaged in respect of the public railway infrastructure in respect of which the power is conferred.³ In the event that there is an interference with Article 8, the Scottish Government considers that it can be justified as being in accordance with law, in pursuit of a legitimate aim and necessary in a democratic society. The right of entry will be set out clearly

³ *Société Colas Est v France* (Application no. 37971/97, 16 April 2002), where the European Court of Human Rights held that the right to respect for home extended to “the right to respect for a company’s registered office, branches or other business premises” (para 41), none of which are affected by the power conferred by the Bill.

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in legislation and the parameters of the power are sufficiently foreseeable. The power of entry pursues the legitimate aims of protecting the security of railway infrastructure, prevention of crime and disorder in relation to that infrastructure and the protection of public safety. Finally, the power is necessary in a democratic society to remove restrictions on access to specified railway infrastructure which might otherwise hinder the ability of constables to patrol and police that property in pursuit of the legitimate aims.

80. No other provision of the Bill raises ECHR issues and accordingly the Scottish Government considers that the provisions of the Bill are compatible with the ECHR.

Island communities

81. The Scottish Government has not identified any specific impacts on island communities through the introduction of the Bill.

Local government

82. The 2012 Act established a statutory role for local government in the development of local policing priorities and local police plans. The integration of the BTP in Scotland into Police Scotland will therefore provide an opportunity for local authorities to also consider railway policing issues within the wider context of local policing priorities and plans, increasing the potential scope of their input and facilitating a more joined-up approach to policing priorities for their local areas.

Sustainable development

83. The Bill paves the way for the integration of railway policing into Police Scotland, ensuring that railway policing in Scotland is accountable, through the chief constable and the SPA, to the people of Scotland. The Scottish Government's approach to integration is based on retaining the skills, knowledge and experience that BTP officers and staff have built, and embedding railway policing within the wider local, specialist and national resources of Police Scotland. As such, no significant impacts (either positive or negative) in relation to sustainable development are envisaged, and a Strategic Environmental Assessment pre-screening template has been completed for the Bill.

Annex: legislative map for implementation of BTP integration

84. The following is the Scottish Government's initial proposed outline of the legislation needed to integrate the BTP and the BTPA into Police Scotland and the SPA. This includes legislation to be passed by the Scottish Parliament, as well as subordinate legislation to be scrutinised by that Parliament and/or the UK Parliament. This outline may be subject to change as work on the overall programme develops.

Outline
<p>1 Railway Policing (Scotland) Bill: The Bill will deliver the following key policy objectives:</p> <ul style="list-style-type: none">• Conferral of necessary new railway policing functions on Police Scotland.• Introduction of model for funding of Police Scotland's railway policing functions by the rail industry.• Provision to remove, in or as regards Scotland, railway policing functions currently conferred on the BTPA and constables of the BTP by Part 3 of the 2003 Act.
<p>2 Order in Council under section 90 of the Scotland Act 1998: Section 90 of the Scotland Act 1998 allows for an Order in Council to be made – subject to scrutiny in both the UK and Scottish Parliaments – for the transfer of property and liabilities of a cross-border public authority whose functions are to be no longer exercisable in or as regards Scotland by virtue of an Act of the Scottish Parliament. This Order in Council would, in accordance with the terms of section 90, provide for the transfer of property and liabilities used or incurred in relation to the functions of BTPA and BTP senior officers which are no longer exercisable in or as regards Scotland.</p>
<p>3 Order under section 104 of the Scotland Act 1998: This Order would make such further consequential and supplementary provision of</p>

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a cross-border nature which is necessary or expedient in consequence of the Act of the Scottish Parliament, except any provision made in a section 90 Order. This might include provision relating to:

- Dissolution of the BTPA/BTP in Scotland, including transitional arrangements and consequential amendments to the Scotland Act 2016.
- Transfer of staff.
- Cross-border enforcement.
- Mutual aid and collaboration between Police Scotland and the BTP (if needed).
- Removal of residual functions and other consequential amendments to reserved legislation.
- Any other changes that may be required.

4 Regulations under section 48 of the 2012 Act and/or Ministerial determinations under those Regulations: These Regulations will, if necessary, make adjustments to existing regulations and determinations on the governance and administration of Police Scotland to reflect, for example, the distinct terms and conditions of service of members of the BTP.

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Abbreviations

2003 Act	Railways and Transport Safety Act 2003
2012 Act	Police and Fire Reform (Scotland) Act 2012
ASR	Abellio ScotRail Limited
BTP	British Transport Police
BTPA	British Transport Police Authority
CBPA	Cross-Border Public Authority
DfT	Department for Transport
JPB	Joint Programme Board
PSA	Police Services Agreement
RPA	Railway Policing Agreement
SCSL	Serco Caledonian Sleepers Limited
SPA	Scottish Police Authority
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006

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Railway Policing (Scotland) Bill

Policy memorandum

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