

This document relates to the Railway Policing (Scotland) Bill (SP Bill 2A) as amended at Stage 2

Railway Policing (Scotland) Bill

[As amended at stage 2]

Revised Explanatory Notes

Introduction

1. As required under Rule 9.7.8.A of the Parliament's Standing Orders, these revised Explanatory Notes are published to accompany the Railway Policing (Scotland) Bill, (which was introduced in the Scottish Parliament on 8 December 2016) as amended at Stage 2. Text has been added or amended as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the margin.
2. These revised Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.
4. A glossary of the expressions and abbreviations used in these notes and the Bill can be found at the end.

The Bill

5. 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")

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and constables of the British Transport Police Force (“BTP”) – in preparation for the integration of the BTP in Scotland into Police Scotland.

6. 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 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.

7. The 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.

8. Explanatory Notes on the various sections of the Bill are below. A detailed explanation of the Bill’s purpose can be found in the Policy Memorandum, which also sets out the policy intentions underpinning it and the relationship of the Bill to the wider programme of work on the integration of railway policing.

Arrangements for railway policing

9. Section 1 of the Bill inserts a new Chapter 12A (consisting of sections 85A to 85M) into Part 1 of the Police and Fire Reform (Scotland) Act 2012

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(“the 2012 Act”), establishing a legislative framework for RPAs to be made between railway operators and the SPA in relation to the policing of railways and railway property.

Railway Policing Agreements

10. Section 85A sets out what the nature of an RPA is. These are contractual arrangements between a railway operator and the SPA which provide for the policing of the railways and any railway property used by the operator and require the operator to pay for that policing. The chief constable must seek to ensure that railways are policed in accordance with RPAs (see section 2 of the Bill and its amendments to section 17 of the 2012 Act).

11. Subsection (1) of section 85A confers a power on the SPA to enter into RPAs¹. Subsection (2) provides that an RPA is an agreement about the policing of railways or railway property. To be classified as an RPA, it must include two specific provisions (in addition to anything else it may contain).

12. The first provision it must contain is one obliging Police Scotland to police the railways and railway property in accordance with any agreement under new section 85K (or in the absence of such an agreement, a determination made under section 85K(2)). This gives railway operators a role in setting the priorities and objectives for the policing of the railways as well as the proposed arrangements for the policing. As noted above, this then feeds into the chief constable’s functions in relation to the policing of Scotland.

13. The second provision it must contain is one obliging a railway operator who is party to such an agreement to pay the sums which the SPA charges for such policing. This should be read in conjunction with section 85B which sets certain parameters around what may be charged for.

14. The chief constable must be involved in the negotiation of RPAs (subsection (3) of section 85A and see also section 17(2) of the 2012 Act

¹ These replace the police service agreements (PSAs) entered into between the BTPA and railway operators under section 33 of the Railways and Transport Safety Act 2003. For more information on the existing arrangements under the 2003 Act, see the policy memorandum at paragraph 25.

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as amended by section 2 of the Bill)². The SPA must also obtain Ministerial approval before entering into or varying any RPA (subsection (4)).

However, this requirement does not apply where an RPA is entered into or varied by means of the dispute resolution procedures set out in sections 85F and 85G.

15. Section 85B makes further provision about the costs which may be recovered under an RPA. These include indirect costs incurred in support of the provision of railway policing (such as support services and administration costs), as well as an ability to take account of underpayments or overpayments for policing services in previous financial years. This means that a charge may be levied based on estimated costs, with a reconciliation being carried out once the actual costs are known. Subsection (2) specifies that charges must not exceed the cost of providing railway policing services.

16. Section 85C permits the Scottish Ministers to compel specified railway operators to enter into RPAs. Any operator, or description of operator, which is to be subject to this requirement will be specified in regulations, following consultation with the railway operator or operators concerned. By virtue of section 125(2) of the 2012 Act (as amended by section 1(2) of the Bill), regulations under this section are subject to the affirmative procedure.

Disputes

17. Where disputes arise in relation to RPAs, sections 85D to 85I will permit those disputes to be referred to the Scottish Ministers and determined appropriately.

18. Section 85D specifies which kinds of disputes may be referred to the Scottish Ministers. These are disputes about the terms to be included in RPAs (where the railway operator is required to enter into one) and disputes about the variation, interpretation or operation of RPAs which have already been concluded (whether or not the railway operator was required to enter into it).

² The chief constable may delegate this function to another constable under section 18 of the 2012 Act, for example a senior officer having operational responsibility for railway policing.

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19. Section 85E confers power on the Scottish Ministers to require steps to be taken in order to attempt to resolve disputes referred to them under section 85D(1) without the need for a formal determination under section 85F or section 85G. While there is no formal limitation on the steps which may require to be taken – provided those steps are considered to be capable of leading to a resolution of the dispute by the parties themselves – examples of such steps may include requiring the parties to engage with one another or requiring the sharing of information. The Scottish Ministers can also require a party or parties to the dispute to meet the payment of costs incurred in the taking of such steps (for example, the costs of producing and sharing information).

20. Section 85F makes provision regarding the determination of disputes that are referred to the Scottish Ministers about the terms to be included in an RPA. The Scottish Ministers have the option either to determine such a dispute themselves or to appoint a suitable person to determine the dispute (subsection (2))³. Subsection (3) makes provision about the procedure that the decision maker must follow when determining a dispute (which must include, as a minimum, an opportunity for the parties to the dispute to make representations). Subsections (4) and (5) make provision about what action may or must be taken by the person determining the dispute, and what effect their determination has.

21. Section 85G makes provision regarding the determination of disputes that are referred to the Scottish Ministers about the variation, interpretation or operation of an RPA. These disputes may be determined only by a suitable person appointed by the Scottish Ministers (subsection (2)). Subsection (3) makes provision about the procedure that the decision maker must follow when determining a dispute (again, at minimum, there must be an opportunity for the parties to the dispute to make representations). Subsections (4) and (5) make provision about what action may be taken by the person determining the dispute, and what effect their determination has.

22. Sections 85H and 85I set out the processes for appeals and enforcement of decisions reached by the Scottish Ministers or a person appointed by them to determine disputes.

³ It is worth noting in this context that “person” may include corporate bodies etc. See schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010.

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23. Under section 85H, the parties to the dispute may appeal to the Court of Session against a number of decisions taken by the Scottish Ministers (or a person nominated by them) in considering and determining disputes. Accordingly, any requirement imposed by the Scottish Ministers to pay costs associated with the taking of steps to resolve the dispute under section 85E(2)(b) may be appealed. Likewise, an appeal may be made to that court against any determination as to the terms to be included in an RPA or as to its variation, construction or operation (including any requirement placed on one party to pay a sum of money to another in accordance with the RPA). Any award of expenses in connection with the determination of a dispute may also be appealed.

24. Section 85I permits any determination of a dispute to be enforced as if it were a judgment of the Court of Session (provided the court gives its permission) using, in particular, powers in relation to contempt of court.

Engagement with railway operators

25. Section 85J places a requirement on the SPA to engage regularly with those railway operators who have entered into an RPA (or are required to enter into an RPA but have not yet agreed terms) about the policing of railways and railway property. Subsection (1) requires a forum to be established and maintained for that purpose. The chief constable is obliged to participate in the forum by virtue of amendments made to section 17(2) of the 2012 Act by section 2 of the Bill⁴.

26. Section 85K places a requirement on the SPA to take steps to agree certain matters with railway operators and the chief constable. Those matters are the priorities and objectives for railway policing, the proposed arrangements by which those priorities and objectives will be met, and the expected overall costs of those arrangements. As with section 85J, this obligation applies to the SPA in relation to railway operators who have entered into an RPA (or are required to enter into an RPA, but have not yet agreed terms). Although the SPA is to take steps to agree all of these matters with railway operators and the chief constable, where the SPA is unable to secure that agreement, it may determine them in consultation with the chief constable (subsection (2)). As noted above, it is a mandatory provision of an RPA that Police Scotland will police the railways and railway

⁴ The chief constable may delegate this function to another constable under section 18 of the 2012 Act, for example a senior officer having operational responsibility for railway policing.

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property in accordance with such priorities and objectives (see section 85A(2)(a)).

27. Agreements under this section are to be made on a yearly basis with the start date for the agreement coinciding with that for the annual police plans of Police Scotland under section 35 of the 2012 Act. By virtue of new section 85K(3), the agreements must have regard to the policing principles (set out in section 32 of the 2012 Act), and have regard to and not be inconsistent with the strategic police priorities (see section 33 of the 2012 Act). They must also not be inconsistent with the most recent strategic police plan (see section 34 of the 2012 Act). For more information on the existing planning requirements of Police Scotland, see Chapter 4 of the 2012 Act.

Engagement with railway users etc.

28. Section 85L places a requirement on the SPA to make arrangements to obtain views of a broad range of people about the policing of the railways and railway property in Scotland. The SPA must make arrangements to obtain the views of passengers on the railways, employees of railway operators, constables and police staff of Police Scotland, as well as anybody else it considers may have an interest in that policing. In doing so, it is open to the SPA to consult representative bodies and organisations.

29. Section 85M provides definitions of those terms used in the inserted Chapter 12A. It should be read in conjunction with section 99 of the 2012 Act which provides definitions for the Part more generally.

Amendment of chief constable's functions

30. Section 2 of the Bill adds to the list of the chief constable's responsibilities in relation to the policing of Scotland, as set out in section 17 of the 2012 Act. It requires the chief constable, in addition to those existing responsibilities, to provide any assistance that the SPA may reasonably seek in order to support it in negotiating RPAs with railway operators. It also adds RPAs to the list of plans etc. which the chief constable must act in accordance with under section 17(4) of the 2012 Act in exercising his or her functions. As discussed above in relation to section 85J, it also requires the chief constable to participate in the railway policing management forum established by that section.

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Power of entry in respect of railway property

31. Section 3 of the Bill provides constables of Police Scotland with a new power of entry in relation to specified railway property through the insertion of a new section 20A into the 2012 Act. This is in similar terms to the power of entry currently available to constables of the BTP (see section 31(2) of the Railway and Transport Safety Act 2003).

32. The power of entry may be exercised without the need for a constable to have a warrant, and reasonable force may be used to effect entry (if necessary). Property may be entered in exercise of this power only if the property is used for or in connection with the provision of railway services (subsection (1)). The property which may be entered in exercise of this power is specified in subsection (2) and 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. No private dwelling may be entered in exercise of this power (subsection (3)).

Functions which are no longer to be exercisable in Scotland

33. Sections 4 and 5 of the Bill remove from the BTPA and constables of the BTP, in or as regards Scotland, the functions conferred by Part 3 of the Railways and Transport Safety Act 2003. These are the functions necessary 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, as well as functions of the BTP which allow it to police the railways in accordance with those agreements.

Limitation on redeployment of constables

34. Section 5A of the Bill limits the ability of the chief constable of Police Scotland to assign constables transferring from the BTP into Police Scotland to duties not relating to the policing of railways and railway property.

35. The limitation on redeployment applies to any constable who transfers from the BTP to Police Scotland by or under an enactment dealing with staff transfers which follows on from this Bill (subsection (1)). Subsection (2) specifies that such a constable is to be assigned duties that relate to the policing of railways and railway property and can only be assigned other duties if that is necessary to meet a special demand on resources for policing (e.g. a major incident).

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36. Subsection (3) deals with the situation where a constable who transfers from the BTP into Police Scotland as part of the integration is engaged in service outwith the BTP and remains on such service for a period after the transfer. In that case, the application of the limitation is suspended until that service ends. This allows the temporary service to continue without breaching the limitation and requires the constable to be assigned duties relating to the policing of railways and railway property when the constable takes up duties in Police Scotland.

34.37. Subsection (4) provides a means for any transferred constable to agree to the limitation being lifted, which would enable the constable to move to duties elsewhere in Police Scotland if the constable so wished.

General

35.38. Section 6 allows the Scottish Ministers to make ancillary provision by regulations to give full effect to the Bill. Section 7 deals with commencement of the provisions in the Bill, and section 8 provides that the short title of the Act is the Railway Policing (Scotland) Act 2017.

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Glossary of defined terms and abbreviations

2003 Act	Railways and Transport Safety Act 2003
2012 Act	Police and Fire Reform (Scotland) Act 2012
2012 Act	The Police and Fire Reform (Scotland) Act 2012
BTP	The British Transport Police Force (established by section 20 of the Railways and Transport Safety Act 2003) and often simply referred to as the British Transport Police
BTPA	The British Transport Police Authority (established by section 18 of the he Railways and Transport Safety Act 2003)
Police Scotland	The Police Service of Scotland (established by section 6 of the 2012 Act) In the 2012 Act, Police Scotland is referred to as the “Police Service”
PSA	Police services agreement (see section 33 of the Railways and Transport Safety Act 2003)
Railway operator	A person (which in this context can include an individual, company or organisation) who has the management or control, or participation in the management or control of all or part or an aspect of a railway or railway property. (See section 1, inserted section 85M)
RPA	Railway policing agreement (see section 1 of the Bill, inserted section 85A)
SPA	The Scottish Police Authority (established by section 1 of the 2012 Act) In the 2012 Act, the SPA is referred to as “the Authority”

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