

Railway Policing (Scotland) Bill

Final Business and Regulatory Impact Assessment

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Scottish Government
Riaghaltas na h-Alba
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Railway Policing (Scotland) Bill
Final Business and Regulatory Impact Assessment

Title of Proposal: Railway Policing (Scotland) Bill

Purpose and intended effect

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. The policy objective of the Railway Policing (Scotland) 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).

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.

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.

This policy is aligned to the following National Outcomes

- We live our lives safe from crime, disorder and danger; and
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

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Consultation

There has been wide-ranging formal and informal consultation during the development of the proposals in the Bill.

Within Government

The Scottish Government is working closely with Transport Scotland and the UK Department for Transport in taking forward the programme of work required to deliver the policy objective set out above. A joint programme board has been established to oversee this work. The programme board membership also includes the British Transport Police Authority and the Scottish Police Authority. Ministers and officials have also been meeting regularly with the British Transport Police, British Transport Police Federation and Transport Salaried Staffs Association.

Public Consultation

A public consultation was carried out from 29 June to 24 August 2016. This focused on how best to deliver the policy of integrating BTP in Scotland into Police Scotland, although a significant number of respondents also chose to comment on the overall policy objective. The consultation can be viewed at:
<https://consult.scotland.gov.uk/police-division/transport-police>.

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.

Overall, the majority of these concerns would appear to be based on an assumption that the funding and capacity of railway policing would reduce, or that the specialism of railway policing could be lost. The policy memorandum for the Bill provides a number of assurances that this will not be the case and sets out plans which will maintain the funding and capacity of railway policing. In addition, Police Scotland has clearly stated that the railway policing specialism will be maintained within its broader structure. 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.

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Business

Consultation with business has focused on the sector most directly affected by the proposals, namely rail operators (Scotrail, Serco Caledonian Sleeper, cross-border passenger franchise operators and cross-border freight operators) which provide services wholly or partly in Scotland, plus Network Rail.

A number of these operators responded to the formal consultation exercise which was undertaken during summer 2016. Key issues raised by the rail industry were:

- the rail industry should retain a high level of engagement in developing railway policing policy.
- cross border operators would be assured of a seamless policing service.
- the skills, expertise and railway knowledge of officers is not diluted and handling of rail specific incidents e.g. fatalities is not diminished.
- The existing cost allocation model is retained and railway policing funds are ring fenced within Police Scotland.

Staff representatives and individual responses expressed concerns that integration would impact negatively on cross-border services; would reduce the safety of rail passengers and staff with possible reduction in officer posts; could increase costs for rail operators; would negatively impact on the terms and conditions of service of BTP officers and staff and could hamper career development and progression.

Assurances on the maintenance of seamless cross-border policing, the importance of rail safety, the maintenance of officer numbers, no cost increase above inflation (RPI), no detriment to terms and conditions of service/pensions have all been repeated in Bill supporting papers, as in the Consultation.

In addition to the formal consultation, Ministers and officials have discussed these proposals with operators in a number of meetings.

Options

The options considered by Scottish Government were:

- Do nothing and maintain the Status Quo.
- Enhanced accountability within the structure of a Cross Border Public Authority (CBPA).
- The Integration of the BTP in Scotland into Police Scotland.

During the consultation process, a further option was proposed, which was to have a standalone transport policing service in Scotland which is accountable to the Scottish Parliament.

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Sectors and groups affected

As noted above, the key sectors affected are rail operators providing services wholly or partly in Scotland, plus Network Rail. There is a potential, but much smaller impact on companies which supply goods and services to BTP and Police Scotland. This encompasses a wide range of potential suppliers, such as suppliers of police vehicles, leased buildings, police uniforms/ equipment, property and vehicle maintenance and utilities/fuel. The impact on these groups is expected to be small in that the Scottish Government is committed to maintaining overall policing capacity and capability following integration.

As such, the total quantum of goods and services required is expected to be broadly similar under each of the options – only the purchasing body would change. Indeed, under the Scottish Government's proposed option the fact that the purchasing body will now have its procurement functions located in Scotland may make it marginally more likely that Scottish-based suppliers would be successful in securing relevant contracts. Nonetheless, there is a competitive UK and international market in most of the goods and services being delivered.

Benefits

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.

Whilst the Scottish Government recognises that alternative options 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. 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 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.

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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). A standalone 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.

Costs

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. The net costs for each of the options considered was similar, in that the core proposal involves maintaining operational policing capability and capacity on Scotland's railways. As such, the cost to railway operators under each of the options is essentially identical.

Financial data provided by the BTPA shows that the total income/cost of railway policing in Scotland was £20.369 million in 2014/15, £21.974 million in 2015/16 and their budget estimate for 2016/17 is £20.755 million; these BTPA financial details are summarised in Table 1 below. More details pertaining to these financial data are available in the BTP Fund Annual Report and Accounts for 2015-16¹; which includes financial analysis of five-year financial performance and current year performance. The Scottish Government remains the principal funder of all railway infrastructure and service provision in Scotland and investment in new and better services to support passenger growth remains a key priority. Since 2007, the Scottish Government has committed over £6 billion to improvements in rail infrastructure and services. The Scottish Government invests over £700 million per annum in rail infrastructure and rail passenger services in Scotland. This investment includes franchise payments and subsidies made to Abellio ScotRail Limited (ASR) – the ScotRail franchisee; Serco Caledonian Sleepers Limited (SCSL) – the Sleeper franchisee; and to support Network Rail UK Ltd in its operation, maintenance, renewal and enhancement of the rail network in Scotland.

¹ http://btpa.police.uk/livesite/wp-content/uploads/2012/07/BTPA_Annual_Report_Low-Res_.pdf

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Table 1: Summary of Railway Policing income/costs in Scotland 2014-2017

| | BTP Scotland share for Business Services £ million | BTP Scotland share for Operations £ million | BTP railway policing total income/costs £ million |
|----------------|--|---|---|
| 2014/15 Actual | 4.429 | 15.940 | 20.369 |
| % of total | 21.74% | 78.26% | |
| 2015/16 Actual | 5.456 | 16.518 | 21.974 |
| % of total | 24.83% | 75.17% | |
| 2016/17 Budget | 4.371 | 16.384 | 20.755 |
| % of total | 21.06% | 78.94% | |

The cost to ASR, SCSL and Network Rail (which together contribute approximately 97% of the cost of railway policing in Scotland) is effectively supported (in part) by the franchise payments and subsidies from the Scottish Government. Cross-border franchises let by the UK Government Department for Transport also contribute to the overall costs of railway policing in Scotland. In broad terms this means that the three main operators pay about £21 million each year for railway policing with about £600,000 paid in total by: West Coast Trains, East Coast Trains, CrossCountry and Transpennine Express as well as other freight operators, small passenger operators and maintenance services.

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. In Table 2 below the UK Government RPI estimates for 2017-21 are applied to the railway policing budget in Scotland, using data published by the Office for Budget Responsibility (OBR) in March 2016². No OBR estimate is available for 2021/22 therefore an assumption of 3.2% is used. The baseline cost used for these estimates is the average BTP Scotland annual cost in 2014-17 of £21.033 million per annum.

It is important to stress that SPA and Police Scotland will be expected to deliver the service in the most efficient way possible, consistent with the terms of the RPA. Where there is scope for efficiencies, for example in corporate overheads, the expectation is that an appropriate share of such savings will be passed on to operators under the RPA. It should therefore not be assumed that costs will rise by RPI every year and the figures below represent a financial envelope that railway policing in Scotland will be expected to operate within rather than representing a fixed RPI escalator.

² <http://budgetresponsibility.org.uk/efo/economic-fiscal-outlook-march-2016/>

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Table 2: Estimated Railway Policing income/costs in Scotland 2017-2022

| Financial Year | OBR Estimated RPI % | BTP estimated income/costs £ million |
|----------------|---------------------|--------------------------------------|
| 2017/18 | 2.8 | 21.621 |
| 2018/19 | 3.4 | 22.356 |
| 2019/20 | 3.2 | 23.071 |
| 2020/21 | 3.2 | 23.809 |
| 2021/22 | 3.2 | 24.570 |

There will be minor transitional costs for SPA/Police Scotland such as the changing of police badges on uniform/vehicles, HR data transfer and aspects of operational integration. Such costs are expected to be small, as vehicles and uniforms are replaced on a regular basis and these are, in any event, small elements of overall costs. The working assumption is that such costs can be accommodated within the overall overhead spend associated with railway policing.

Scottish Firms Impact Test

As noted above, Ministers and officials have held regular face to face meetings with rail operators which provide services wholly or partly in Scotland, and with other industry bodies such as the Office of Rail and Road (ORR – the rail regulator) and Transport Focus. The key reassurances sought by the rail industry have been that:

- costs to them of railway policing services will be kept under control;
- they will have a strong voice in agreeing the policing services provided, costs and oversight of performance; and,
- the policing service provided will provide strong levels of safety and support efficient operation of the network.

As noted above, the Scottish Government’s proposals are based on maintaining capacity and funding of railway policing in Scotland, and Police Scotland has given a clear commitment to maintaining a railway policing specialism. On this basis, we believe that the proposals will secure the safety of passengers and staff, and support efficient operation of the network.

The Bill 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.

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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 (and the means by which performance may be assessed), and
- the expected overall costs involved in providing such arrangements.

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.

Competition Assessment

The Scottish Government does not believe that these proposals will have any material impact on competition. The cost of railway policing in Scotland is currently over £21 million and whilst significant is a small percentage of the annual investment of over £700 million the Scottish Government makes in rail infrastructure and rail passenger services in Scotland. This investment includes franchise payments and subsidies made to Abellio ScotRail Limited (ASR) – the ScotRail franchisee; Serco Caledonian Sleepers Limited (SCSL) – the Sleeper franchisee; and Network Rail in Scotland (who together make up over 97% of the cost of railway policing in Scotland and the intention is to provide a stable cost base for the industry into the future. The proposed Railway Policing Agreements provide a means by which operators can retain a voice in the policing of the railways and associated costs. This will also allow the distribution of costs to be discussed and agreed.

The Scottish Government also believes that the proposals will only have a very marginal impact on the market for supply of goods and services to policing bodies. Both BTP and Police Scotland already purchase a significant value of such services and the overall quantum of this is not expected to change to any material degree. The only change will be a small increase in the value of Police Scotland contracts and a slight decrease in the value of BTP contracts. The total value of property, equipment and travel costs for BTP in Scotland is approximately £1.75m and this provides some guide to the scale of the likely shift in the value of contracts let from BTP to Police Scotland. When the scale of the sectors involved is considered (e.g. property, vehicles, utilities, uniforms and equipment) then the effect on competition is expected to be negligible.

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Test run of business forms

There are no new forms being introduced as a result of this proposal. The current arrangements for railway policing are based on Police Services Agreements' (PSAs) which make the BTP subject to an obligation to exercise police functions on railways and railway property, and on the other hand require payments to be made by railway operators to the BTPA to cover the cost of those functions. 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. To recognise the unique status of this arrangement, and to avoid potential confusion with the Police Service Agreements covering additional policing for events as set out in the 2012 Act, these will be termed 'Railway Policing Agreements' (RPAs). However, the content is expected to be broadly similar.

Legal Aid Impact Test

No impacts are anticipated on legal aid. Under the current PSA model there have been no legal challenges, Ministerial imposition of PSAs or appeals. The likelihood of any legal dispute arising is therefore considered low, and in any event the parties involved are likely to be large corporate entities that are very unlikely to be entitled to legal aid.

Enforcement, sanctions and monitoring

As with existing arrangements, there is to be a power to compel railway operators to enter into RPAs. Where disputes arise in relation to RPAs, those disputes can be referred to the Scottish Ministers and determined appropriately. Those disputes may be about the terms to be included in RPAs (which may be determined by the Scottish Ministers or by a suitable person appointed by the Scottish Ministers) or about the variation, interpretation or operation of RPAs which have already been concluded (which must be determined by a suitable person appointed by the Scottish Ministers).

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).

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.

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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. 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 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.

Implementation and delivery plan

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.

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.

Achieving the policy objective will require a substantial programme of work following the passage of the Bill. This will include elements of particular interest to the Scottish Parliament and stakeholders – for example, 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. Further business impact assessments may be undertaken at key stages if required.

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Post-implementation review

As noted above, The Bill 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. The purpose of this engagement includes reviewing the performance of the railway policing service being provided.

Summary and recommendation

The Scottish Governments proposed approach is as set out in the Bill and accompanying documents, namely that railway policing functions in Scotland should be integrated into Police Scotland. The projected envelope for costs of railway poling in the years ahead is as summarised in the table below.

Table 2: Estimated Railway Policing income/costs in Scotland 2017-2022

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| 2018/19 | 3.4 | 22.356 |
| 2019/20 | 3.2 | 23.071 |
| 2020/21 | 3.2 | 23.809 |
| 2021/22 | 3.2 | 24.570 |

These are costs that are already being borne by the railway industry at present and no material net change is anticipated.

The key benefits are as summarised in the opening section above, namely:

- 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.

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Declaration and publication

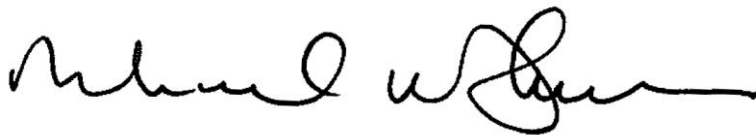
I have read the Final Business and Regulatory Impact Assessment and I am satisfied that

(a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and

(b) that the benefits justify the costs.

I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:



Date:

6th December 2016

Michael Matheson

Cabinet Secretary for Justice

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