

RAILWAY POLICING (SCOTLAND) ACT 2017

EXPLANATORY NOTES

THE ACT

Arrangements for railway policing

Disputes

15. 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.
16. *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).
17. *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).
18. *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))¹. 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.
19. *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.

¹ 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.

*These notes relate to the Railway Policing (Scotland) Act
2017 (asp 4) which received Royal Assent on 1 August 2017*

20. *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.
21. 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.
22. *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.