



# Railway Policing (Scotland) Act 2017

## 2017 asp 4

PROSPECTIVE

### *Arrangements for railway policing*

#### **1 Provision for policing of railways and railway property**

(1) After section 85 of the Police and Fire Reform (Scotland) Act 2012 insert—

#### **“CHAPTER 12A**

#### **POLICING OF RAILWAYS AND RAILWAY PROPERTY**

#### *Railway policing agreements*

#### **85A Railway policing agreements**

- (1) The Authority may enter into a railway policing agreement (referred to in this Chapter as an “RPA”) with a railway operator.
- (2) An RPA is an agreement relating to the policing of a railway or railway property which, in particular, includes provision requiring—
  - (a) the Police Service to police the railway or railway property in accordance with any agreement reached (or determination made) under section 85K, and
  - (b) the railway operator to pay to the Authority such sums as the Authority may charge in respect of the policing which is to be (or has been) provided.
- (3) The Authority must involve the chief constable in the negotiation of an RPA and the chief constable must provide the Authority with such assistance as it may reasonably require in that regard.
- (4) Before entering into or varying an RPA under this section, the Authority must obtain the approval of the Scottish Ministers.

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### **85B Acceptable charging under an RPA**

- (1) The charges that the Authority may make under an RPA may—
  - (a) include amounts calculated by reference to expenditure which is incurred, or expected to be incurred, otherwise than directly in connection with the provision of the policing concerned, and
  - (b) take account of overpayments or underpayments in respect of previous financial years.
- (2) Nothing in section 85A or this section permits the making of any charge for policing which exceeds the cost of providing that policing.

### **85C Power to require railway operators to enter into an RPA**

- (1) The Scottish Ministers may by regulations require—
  - (a) a railway operator, or
  - (b) railway operators of such description as may be specified in the regulations,
 to enter into an RPA within such period (if any) as may be specified in the regulations.
- (2) The Authority must take reasonable steps to enable a railway operator to comply with a requirement imposed by virtue of subsection (1).
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult the railway operator or operators who are to be subject to the regulations.

### *Disputes*

### **85D Referral of disputes to the Scottish Ministers**

- (1) The Authority or a railway operator may refer a dispute falling within subsection (2) to the Scottish Ministers.
- (2) The disputes which fall within this subsection are—
  - (a) a dispute where—
    - (i) the parties cannot agree the terms to be included in an RPA, and
    - (ii) the failure to agree is likely to cause (or has caused) a breach of a requirement imposed by regulations under section 85C,
  - (b) a dispute about—
    - (i) whether an RPA should be varied, or
    - (ii) the terms of such a variation,
  - (c) a dispute about the construction or operation of an RPA.

### **85E Preliminary powers of Scottish Ministers to resolve disputes**

- (1) This section applies where a dispute has been referred to the Scottish Ministers under section 85D(1).

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- (2) Before appointing a person under section 85F(2)(b) or (as the case may be) section 85G(2) to determine the dispute, the Scottish Ministers may—
  - (a) require a party to the dispute to take such steps as the Scottish Ministers specify to resolve the dispute,
  - (b) make a determination that a party must make a payment in respect of any costs incurred by the Scottish Ministers, the other party or another person in connection with the taking of such steps.

#### **85F Disputes about terms to be included in an RPA**

- (1) This section applies to a dispute falling within section 85D(2)(a) which has been referred to the Scottish Ministers under section 85D(1) (and has not been resolved).
- (2) The Scottish Ministers may—
  - (a) determine the dispute themselves, or
  - (b) appoint a suitable person to determine the dispute (“the appointed person”).
- (3) The Scottish Ministers or, as the case may be, the appointed person—
  - (a) must, before determining the dispute, give each party to the dispute an opportunity to make representations, but
  - (b) may otherwise decide the procedure for determining the dispute.
- (4) In a determination under this section, the Scottish Ministers or, as the case may be, the appointed person—
  - (a) must specify the terms to be included in the RPA,
  - (b) may make an award of expenses against a party.
- (5) Where a determination under this section specifies the terms to be included in an RPA, those terms are to be treated as if they had been agreed as part of an RPA entered into between the parties under section 85A.

#### **85G Disputes about variation, interpretation or operation of an RPA**

- (1) This section applies to a dispute falling within section 85D(2)(b) or (c) which has been referred to the Scottish Ministers under section 85D(1) (and has not been resolved).
- (2) The Scottish Ministers must appoint a suitable person to determine the dispute (“the appointed person”).
- (3) The appointed person—
  - (a) must, before determining the dispute, give each party to the dispute an opportunity to make representations, but
  - (b) may otherwise decide the procedure for determining the dispute.
- (4) In a determination under this section, the appointed person may—
  - (a) vary the terms of the RPA which forms the basis of the dispute,
  - (b) decide how any term of the RPA is to be construed or operated,
  - (c) decide that, in accordance with an RPA, a party must pay a specified sum or a sum assessed in a specified manner to the other party,

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(d) make an award of expenses against a party.

- (5) Where a determination under this section varies the terms of an RPA, those terms are to be treated as if they had been agreed as part of an RPA entered into between the parties under section 85A.

### **85H Appeals**

A party to a dispute referred to the Scottish Ministers under section 85D(1) may appeal to the Court of Session against any determination made under section 85E(2)(b), 85F or 85G.

### **85I Enforcement of determination**

A determination made under section 85E(2)(b), 85F or 85G may, with the permission of the Court of Session, be enforced as if it were a judgment of that court (and may, in particular, be enforced by the use of powers in relation to contempt of court).

### *Engagement with railway operators*

### **85J Railway policing management forum**

- (1) The Authority must establish and maintain a forum for it and the chief constable to engage on a regular basis with relevant railway operators and relevant trade unions about the policing of railways and railway property in Scotland.
- (2) For the purposes of this section and section 85K, a “relevant railway operator” is a railway operator which is a party to an RPA, or is subject to a requirement to enter into an RPA under regulations made under section 85C.

### **85K Agreement of railway policing priorities, objectives etc.**

- (1) The Authority must, for each yearly period beginning on 1 April, take steps to agree with relevant railway operators and the chief constable—
- (a) the priorities and objectives for the policing of the railways and railway property in Scotland,
  - (b) the proposed arrangements for policing the railways and railway property in order to meet those priorities and objectives (and the means by which performance may be assessed), and
  - (c) the expected overall costs involved in providing such arrangements.
- (2) In the absence of an agreement being reached under subsection (1), the Authority, in consultation with the chief constable, is to determine the matters described in paragraphs (a) to (c) of that subsection.
- (3) Section 36 applies to any agreement reached (or determination made) under this section as it applies to an annual police plan.

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### *Engagement with railway users etc.*

#### **85L Engagement with railway users and other interested persons**

- (1) The Authority must make arrangements to obtain the views of the persons and bodies listed in subsection (2) about the policing of railways and railway property in Scotland.
- (2) The persons and bodies are—
  - (a) passengers on the railways,
  - (b) employees of railway operators,
  - (c) constables (of all ranks),
  - (d) police staff,
  - (e) relevant trade unions,
  - (f) the Police Federation for Scotland,
  - (g) such persons or bodies as appear to the Authority to be representative of senior officers,
  - (h) such persons or bodies as appear to the Authority to be representative of superintendents (including chief superintendents), and
  - (i) such other persons and bodies as the Authority considers may have an interest in the policing of railways and railway property in Scotland.

### *Interpretation*

#### **85M Meaning of words and expressions used in this Chapter**

- (1) In this Chapter—
  - “expenses” means—
    - (a) the legal or other expenses incurred by the Scottish Ministers or the person appointed to determine the dispute under section 85F(2) or 85G(2) (including the expenses of making the appointment), and
    - (b) the legal or other expenses incurred by a party to the dispute,
  - “railway” is to be construed in accordance with section 67(1) of the Transport and Works Act 1992,
  - “railway property” means—
    - (a) a track,
    - (b) a network,
    - (c) a station,
    - (d) a light maintenance depot,
    - (e) a train used on a network or any other railway vehicle on a network,
  - “railway policing agreement” (and “RPA”) has the meaning given by section 85A.
  - “relevant trade unions” means those trade unions which appear to the Authority to be representative of—
    - (a) employees of railway operators, and

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(b) police staff.

(2) For the purposes of this Chapter, a reference to a railway operator is a reference to a person who has the management or control, or participation in the management or control, of all or any part or aspect of a railway or railway property.

(3) For the purposes of this Chapter, the expressions used in the definition of “railway property” in subsection (1) are to be construed in accordance with sections 82 and 83 of the Railways Act 1993 (interpretation).”.

(2) In section 125 of the Police and Fire Reform (Scotland) Act 2012 (subordinate legislation)—

(a) in subsection (2), for the words from “An” to “is” substitute “ Orders or, as the case made be, regulations made under section 10(2), 11(5) or 85C(1) are ”,

(b) in subsection (4), for “, and any regulations or” substitute “ or regulations, and any ”.

## **2 Chief constable's functions in relation to policing of railways and railway property**

In section 17 of the Police and Fire Reform (Scotland) Act 2012 (chief constable's responsibility for the policing of Scotland)—

(a) in subsection (2)—

(i) the “and” after paragraph (f) is repealed,

(ii) after paragraph (g) insert—

“(h) is to provide the Authority with such assistance as it may reasonably require in the negotiation of railway policing agreements (see section 85A(3)) and participate in the forum established under section 85J.”,

(b) in subsection (4)(b)—

(i) the “and” after sub-paragraph (ii) is repealed,

(ii) after sub-paragraph (iii), insert—

“(iv) a railway policing agreement entered into by the Authority under section 85A(1).”.

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