



The Scottish Parliament
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee
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Railway Policing (Scotland) Bill at Stage 1

The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 17 January and seeks an explanation of the following matters:

Section 1 - Provision for policing of railways and railway property
New section 85C(1) of the Police and Fire Reform (Scotland) Act 2012
Power to require railway operators to enter into railway policing agreements

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative

New section 85C gives a power to the Scottish Ministers to make regulations requiring a railway operator (or a specific class of railway operators) to enter into a Railway Policing Agreement (“RPA”) within such period (if any) as may be specified in the regulations. The Scottish Police Authority must take reasonable steps to enable a railway operator to comply with any such requirement to enter into an RPA. The Scottish Ministers must consult the affected railway operator(s) before making regulations under section 85C.

Under section 125 of the 2012 Act, regulations made under new section 85C are subject to the negative Parliamentary procedure.

The Committee asks Scottish Government to explain the following, in connection with new section 85C:

- The power in new section 85C of the Police and Fire Reform (Scotland) Act 2012, inserted by section 1 of the Bill, allows the Scottish Ministers to impose a time period within which an RPA must be entered into by a railway operator specified in the regulations. The equivalent power in section 34 of the Railways and Transport Safety Act 2003 (“the 2003 Act”) does not allow the Secretary of State to impose such a time period. Given that the general approach in the Bill appears to be to reflect the existing model, set out in the 2003 Act, in terms of Police Services Agreements, please explain why it is considered necessary to enhance the existing power in this way and what problem this is intended to address.
- Section 34(2) of the 2003 Act provides that a railway services provider who is required by subordinate legislation to enter into a Police Services Agreement and who provides railway services without doing so commits an offence and, if guilty, is liable to a fine. This provision is not reflected in the power set out in section 1 the Bill. It appears that the lack of any sanctions in the Bill renders the power in section 1 effectively without ‘teeth’, since there is no incentive for a specific railway operator to comply with any requirement set out in regulations. Please explain why this different approach has been taken and, in the absence of sanctions, how it is intended to procure the cooperation of specific railway operators in complying with the requirement to enter into an RPA.
- The Delegated Powers Memorandum suggests that the choice of the negative Parliamentary procedure is appropriate for this power, since the initial exercise of the power is likely to broadly maintain the current arrangements for mandatory policing agreements for railway operators in Scotland, and any subsequent exercise of the power is likely to be to reflect changes of an administrative nature.

The Committee accepts that there may be circumstances in which the power is exercised in response to purely administrative changes relating to specific railway operators. However, the Committee does not consider that the power itself is purely administrative in nature.

The Committee notes that the requirement for specific railway operators to enter into Railway Policing Agreements with the Scottish Police Authority is fundamental to the operation of the new model for Scotland and therefore to the delivery of the policy intention for the Bill. Similarly, the requirement for operators to enter into RPAs will impose on those operators an ongoing contractual obligation which in turn will have an impact on how their business is managed and financed.

Further, while the Committee notes the Scottish Government’s intention to exercise the power initially in a way which broadly maintains the current arrangements, the Committee considers that it would in fact be open to the Scottish Government to exercise the power differently, so as (for example) to introduce a modified railway policing model north of the border.

For these reasons, it appears to the Committee that the exercise of this power is both integral to the delivery of the policy intention and has the potential to fundamentally affect stakeholder interests under the new model.

The DPM also suggests that the negative procedure is appropriate since the power may require to be exercised relatively expeditiously to respond to changing circumstances. While the Committee accepts that certain administrative changes in relation to specific operators might require to be addressed relatively quickly by exercise of this power, the Committee does not consider that this alone justifies the choice of the negative procedure for a power which is not of a purely administrative nature. Other bespoke procedures exist for this type of power, which requires to be exercised expeditiously but which also merits an enhanced level of Parliamentary scrutiny.

In light of the above, the Committee considers that the negative procedure would not provide a sufficient level of parliamentary scrutiny and invites the Government to consider providing for affirmative procedure instead.

Please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Tuesday 31 January.

Thank you.

Euan Donald
Clerk to the Delegated Powers and Law Reform Committee