

From: Figgures, Andrew
Sent: Thursday, May 28, 2015 06:27 PM
To: Crowther, Paul; McCall, David; Falcon, Iggi; Furness Michael
Cc: Redacted Section 40(2) **Redacted Section 40(2)**
Redacted Section 40(2) '@crosscountrytrains.co.uk' Redacted Section 40(2) '@crosscountrytrains.co.uk'>
Subject: SCOTLAND DEVOLUTION

You may have seen thist.....<http://services.parliament.uk/bills/2015-16/scotland.html>
Clauses 38 and 39 respectively devolve legislative and executive competence. The Scottish Government don't like the approach in 39.

Yours
Andrew

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From: Falcon, Iggi
Sent: 05 June 2015 14:28
To: 'Millie Banerjee'; **Redacted Section 40(2)**; Figgures, Andrew; Crowther, Paul; McCall, David; Furness Michael; 'Bill Matthews'; Vitty, Charlotte; Hanstock, Adrian
Subject: Scotland - Designation as Cross-Border Authority

Dear all,

As you know, the Scotland Bill was introduced to the House on 28 May, and it contains two distinct set of provisions concerning the status of the BTP. The first, which we had learned about in the 'Command Paper' published on Burns Night, is the removal of the Scottish Parliament's barrier to legislate in matters of railways policing. This effectively deals with the issue of legislative competence and is achieved by introducing an exception clause to the reserved matter that is "Rail transport security", contained in the Scotland Act 1998.

The second set of provisions relate to our new status as a cross-border authority. The Command Paper didn't talk about this proposal, although it did suggest that "*further consideration will need to be given to the manner in which executive competence will be transferred*". What the Bill proposes, to be exact, is to designate the BTPA as a cross-border authority, as well as the Chief Constable, Deputy Chief Constable and the Assistant Chief Constables. This is what the Bill's explanatory notes have to say about this move:-

This clause facilitates the devolution of executive competence in relation to the policing of railways in Scotland by specifying as cross-border public authorities the British Transport Police Authority, the Chief Constable of the British Transport Police, the deputy Chief Constable of the British Transport Police and the assistant Chief Constables of the British Transport Police ("the BTP Bodies"). The Scotland Act 1998 applies to BTP Bodies in the same way as it applies to any cross-border public authority specified in an Order in Council made under section 88(5) of the Scotland Act 1998 (see clause 38(3)), although one modification is needed to ensure that this is the case.

The designation of the BTP Bodies as cross-border public authorities will result in functions in relation to those bodies being modified immediately so that future appointments to the British Transport Police Authority or to the offices of Chief Constable, Deputy Chief Constable and Assistant Chief Constables will only be able to be made in consultation with Scottish Ministers. Other functions in relation to the BTP Bodies will similarly only be able to be exercised in consultation with the Scottish Ministers unless their effect on Scotland would be wholly in relation to reserved matters.

The designation of the BTP Bodies as cross-border public authorities is envisaged as a first step in the process of devolving greater powers to the Scottish Government. An order could, if required, be made under section 89 of the Scotland Act 1998 to confer further or wider functions on Scottish Ministers in relation to the BTP Bodies or to make other modifications to constitutional arrangements. In the event that the Scottish Parliament exercises the new legislative competence conferred by clause 37 to remove the Scottish aspects of functions of, or relating to, the BTP Bodies, section 90 of the Scotland Act 1998 could then be used to transfer the property and liabilities of the cross-border public authority which will enable the transfer to take place in an orderly manner.

To ensure that the Scotland Act 1998 applies to the BTP Bodies as it does to other cross-border public authorities clause 38(2) provides for the reference in section 88(3) of the Scotland Act 1998 to "pre-commencement enactments" to be read as a reference to the Railways and Transport Safety Act 2003.

The next step for me is to bottom out what it means to be a cross-border authority. Looking through the list of existing bodies falling within this category is quite interesting... almost none of them bear resemblance to us. I

recognise UK Sports, Visit Britain, the Criminal Injuries Compensation Authority, the Forestry Commission and perhaps a couple more. I was surprised not to see Network Rail or the Security Industry Authority (SIA), for instance.

The Forestry Commission was one we've picked up in the past because they went through an interesting process of 'administrative' devolution in the early 2000s. I believe they've kept that set-up, with the Scottish Government providing the budget for the Scottish side, but continuing to have significant cross-border activities like research, etc. I have scheduled a telephone conference on 15 June with two people in charge of Forestry Commission cross-border services to understand a little more about their arrangements. Hopefully, they'll be able to walk me through governance and accountability issues, like the joint appointment of Forestry Commissioners, which may shed some light on our future relationship with Scottish Government. I will report back on my findings soon.

I trust this is helpful. Please let me know if you require any further information at this stage.

Regards,

Iggi Falcon
Senior Policy Officer

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MINISTERIAL MEETING WITH BTP CHIEF CONSTABLE
THURSDAY 7th JANUARY 2016 - 0930-1030 HRS
SCOTTISH PARLIAMENT ROOM TG 20/21

Attendance:

Cabinet Secretary for Justice – Michael Matheson MSP
Minister for Transport and Islands – Derek Mackay MSP
BTP Chief Constable – Chief Constable Paul Crowther OBE
BTP D Division Commander – Chief Superintendent John McBride
Scottish Government - Transport Scotland – Gordon Macleod
Scottish Government - Police Division – John Craig
APS to Cabinet Secretary for Justice – Steven Day

Note of Meeting:

1. BTP Strategic Challenges:

- The Chief Constable updated Ministers on the implications for the BTP in the Spending Review 2015 .
- The Chief Constable updated Ministers on the current strategic challenges for infrastructure policing throughout the UK.

2. BTP Armed Policing:

- The Chief Constable updated Ministers on BTP armed policing and the ongoing BTP risk assessment for armed policing.

3. Integration of BTP Scotland into Police Scotland:

- The Cabinet Secretary for Justice confirmed the Scottish Government ambition is to maintain a specialist national railway policing unit within Police Scotland which is accountable to the people of Scotland, builds on the excellent skills, knowledge and experience of BTP and enhances railway policing in Scotland.
- The Cabinet Secretary for Justice also confirmed that the ambition of the Scottish Government is to Integrate by 1st April 2018 and to do this in a Joint Programme Board with DfT, BTPA and SPA.
- The Cabinet Secretary for Justice said that the Scottish Government are preparing to Consult on the integration of the BTP in Scotland into Police Scotland and we will share an advance draft with the Joint Programme Board, Police Scotland and the BTP later this month.

4. Date of Next Meeting:

- A date will be arranged for the next BTP Quarterly Update.

John Craig
Police Division
Scottish Government
12th January 2016

From: Falcon, Iggi
Sent: 15 January 2016 15:39
To: Crowther, Paul
Subject: FW: Scotland - BTP: BTPA action plan
Attachments: Scotland - BTPA timetabling considerations - v2.xlsx

Follow Up Flag: Follow up
Flag Status: Completed

Dear Chief,

For your information. This will be the main agenda item at the meeting with the DfT and the SG in Edinburgh next Thursday.

Please let me know if you need me to brief you on this.

Regards,

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Interim Business Manager

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Transfer of BTP functions - Timetabling considerations

Nr	Issue	Starting Position	End Position	FY2018/19 Switchover Impact	FY 2019/20 Switchover Impact	Risk	Sequences / Interdependencies
1	Funding model	D Division (Scotland) funded through Cost Allocation Model (the formula for allocating charges to those who operate and provide services on the network).	→ Unknown. Subject to decision on future funding model likely for Police Scotland's Railways Policing Function (and whether this is ringfenced within Police Scotland's budget). Clarity required to ensure that changes to operations in England and Wales include revised overhead resulting from break-up. Decision taken on division of assets and liabilities. Decision taken on reserves and treatment of POCA and other sources of income.	A decision needed by end of FY 2016/17 at the latest in order to revise assumptions for FY2018/19 BTP and Police Scotland budgeting process.	Delivery timetable (and Risk to delivery in RAG)	Risk	Seq. No 1 - Decision on future funding model will have consequences all other decisions (2,3,4,5,6,7)
2	PSA contracts						
	• Termination in case of Operators in Scotland	Clause 3.1 of PSA contract - BTPA can give termination notice of three years. Where mutually agreed, no notice period.	→ PSAs between BTPA and Scottish operators terminated.	Impact only if PSA-holder does not agree to termination. In which case, the notice would be overdue for switchover on 1 April 2016.	Impact only if PSA-holder does not agree to termination. In which case, the notice could be given on 1 April 2016.		Seq. No 2 - Will depend on decision under 1. Will have consequence on 4.
3	• Amendment to Cost Allocation Model in case of operators in England and Wales	Clause 5.8 - sets out BTPA powers to amend the cost allocation charge, if this is to be modified as a result of the break-up.	→ New Charging model rolled out for TOCs in England and Wales	Option is only viable if all PSA holders agree to change the model, or if demonstrated that the change needs to be made by necessity (this may need to be legally tested). In this case, the notice must be served no later than 31 March 2017. Important to note that this may result in legal challenge given sensitivity of TOCs. There would be some difficulty in agreeing a methodology for a revised model that uses Control Period 5 (2014-2018) inputs if it spans into Control Period 6 (2019-2024).	Option is viable if process of consultation described in Rail Transport and Safety Act 2003 begins before 1 April 2016. Also viable as per options on left column. No impact concerning transition into Control Period 6.		Seq. No 2 - Will depend on decision under 1. Will have consequence on 4.
4	Legislative considerations	Scottish parliament will have legislative competence when Scotland Bill clears Westminster Parliament.	→ Scottish parliament makes legislation to integrate D Division into Police Scotland.	Pre-legislative consultation by Scottish Government to start soon after Scotland Bill clears UK Parliament. Drafting to consider re-structuring of funding for BTP Scotland, plus consequential amendments to secondary legislation and railway bylaws. Secondary legislation by DfT can only be drafted after Scottish Parliament's bill is published. Bill to be introduced to Scottish Parliament in 2016/17 for Royal Assent sometime before the end of FY 2017/18. DfT Bill to be introduced before the end of 2016/17 if it's to resolve Royal Assent in time for 2018/19 switchover.	Planned legislative timetable would benefit from additional year.	Medium	Seq. No 3 - Will depend on 1, 2, 5, 6. Will have consequence on 7, 8.
5	Pensions	BTPA participates in two pension schemes (Officer and Staff).	→ Decision taken on whether to set a new scheme for Scottish members or whether SPA will participate in existing schemes if schemes left structurally unchanged, then decision taken on division of past and future pension costs between BTPA and SPA (addressing any cross-subsidies). If Scottish members are transferred to new scheme, decisions taken on:- 1. Benefits for protected members 2. Treatment of accrued benefits whilst at BTPA (e.g. salary link?) in case decision is taken to provide 2 pensions. 3. Asset division 4. Investment strategy arrangements going forward. Decision taken on costs for implementing any change and seeking legal/actuarial advice	Arrangements can be made to allow the SPA to participate in existing scheme and thus provide a short-term stop-gap solution post switchover. Decision on SPA's participation or segregation of schemes important to inform the triennial investment strategy (both would affect the actuarial valuation). Decisions on investment strategy are expected to be considered in early 2016 for the officer scheme and 2017 for staff scheme, so clearly on future set-up would be required before the process is underway.	Additional year would provide greater flexibility but the future of the Scottish members' scheme will still impact on investment strategy.	Low	Seq. No 2 - Will depend on 1. Will have consequence on 4, 6.
6	Workforce transfers	BTPA holds contracts of employment with all D Division workforce (officers and police staff)	→ D Division workforce transferred to Police Scotland in accordance with agreed transfer schemes. View taken on whether TUPE applies	Impact on deadline would depend on Transfer schemes to be decided by Scottish Ministers. It would be preferable to agree any potential reorganisation of staffing before proceeding to understand liability/obligations transfers.	See left column.	Low	Seq. No 4 - Will depend on 1, 4, 6.
7	Contracts/ Leases	BTPA signatory to all contracts for good and services received by D Division. All leases held by BTPA.	→ Leases transferred where possible. Relevant contracts at BTP renegotiated to take account of break-up. Decision taken on future of these contracts where termination is not practicable.	This would depend on decisions by SG on contract management during the transition. It may not be practicable to terminate certain contracts. Also, decision needed on how the liability for increased cost of procurement at BTP would be managed.	See left column.	Low	Seq. No 4 - Will depend on 1, 2, 4, 6.

8	3-year strategy ends in 2019	BTP's strategic objective is to deliver 20% reduction in Crime, 20% reduction in Disruption and 10% increase in Confidence by 31 March 2019	→	BTPA reports to Stakeholders on delivery of 20-20-10; agrees new Strategy for 2019-2022. Scottish stakeholders note progress on delivery up to switchover date and sign up to revised separate strategy for railways policing in Scotland.	Consultation on new strategy for Railways Policing in Scotland would need to commence end of 2016. BTPA's Strategy 2018-2022 would appear to exclude Scotland in any event.	Low	Consultation on new strategy for Railways Policing in Scotland would need to commence end of 2017 (on the basis of the current legislative framework).	Low	Secs No 4 - Will depend on 1, 2, 3, 4, 6.
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Ref 1 PSA Contract Clause 5.8 - Amendment to Cost Allocation Model

- (a) If the amendment is, in the reasonable opinion of the BTPA, required to ensure compliance with the 2003 Act or any other legal requirement binding on it, the amendment shall take effect in respect of the next Financial Year following that notification and in subsequent Financial Years;
- (b) If the amendment is required as a result of a determination in an arbitration pursuant to section 35 of the 2003 Act or following any other litigation, the amendment shall take effect in respect of the next Financial Year following that notification and in subsequent Financial Years at such time as may be directed by the arbitrator or judge;
- (c) If the amendment has been agreed in writing between the Authority and the Customer, the amendment shall take effect in such Financial Year as the Authority and the Customer may agree and in subsequent Financial Years; and
- (d) If the amendment is made for any other reason, it shall be made only after consultation as required by the 2003 Act and it shall take effect in respect of the third Financial Year following that notification and in subsequent Financial Years.