

# **RAILWAYS AND TRANSPORT SAFETY ACT 2003**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 3 – British Transport Police**

56. The British Transport Police Force ("BTP") operates in England, Scotland and Wales but not in Northern Ireland. Accordingly this part extends to England, Wales and Scotland (except in so far as it applies to tramways and the exercise of powers by civilians).

#### **Background**

57. The BTP is the national police force for the railways in Great Britain. The force is also responsible for policing London Underground, the Docklands Light Railway, Croydon Tramlink and the Midland Metro. Their main activities include law and order policing, maintaining the Queen's peace and protecting staff and the public on the railways. The force deals with all crimes, including murder, violence, sexual offences, robberies, thefts and fraud, and a host of other railway specific incidents, such as accidents, fatalities and suicides. In particular the force has expertise in anti-terrorist strategy, handling of major incidents and the policing of travelling sports fans.
58. The BTP has its origins in the police forces of the many railway companies established by various Acts of Parliament in the 19<sup>th</sup> century. After the Second World War, nationalisation brought the different railway police forces together under the control of the British Railways Board ("BRB"). BTP constables are currently employed by the Strategic Rail Authority ("SRA") as successor to the BRB and are overseen by the BTP Committee whose principal function is to provide an adequate and efficient police service for the railways. The BTP Committee, in effect, performs many of the functions of a Home Office police authority.
59. In October 2001 the Government issued a consultation document entitled 'Modernising the British Transport Police' with detailed proposals to bring BTP into line with Home Office police forces in terms of accountability, status and powers. The Government's main proposals in the consultation document were:
- to establish a police Authority for the BTP;
  - to place the jurisdiction of BTP constables over the railways on a statutory basis;
  - to give BTP constables jurisdiction outside the railways in certain circumstances; and
  - to give BTP constables a number of additional police powers that were only available to constables of local police forces.
60. The proposal to give BTP constables jurisdiction outside the railways was taken forward in section 100 of the Anti-terrorism, Crime & Security Act 2001. Schedule 7 of that

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2003 (c.20) which received Royal Assent on 10 July 2003*

Act, and sections 75 and 76 of the subsequent Police Reform Act 2002, extended to the BTP the additional police powers included in the consultation document. The remaining proposals, namely the establishment of a police authority and giving the BTP a statutory jurisdiction over the railways, are included in this Act.

61. The existing staff of the BTP (both constables and the civilian staff) will be transferred to the new Authority under the provisions of the Act. Staff terms of employment, including pension benefits, will not be affected by the transfer to the Authority.

**Commentary on Sections**

62. The BTP Authority ("the Authority") is to be modelled on existing Home Office police authorities (such as Northamptonshire Police Authority) with the sections in this part of the Act largely mirroring the Police Act 1996 provisions on such authorities. Where the sections do not mirror the Police Act 1996 provisions in every respect, this is generally only so as to meet the specific circumstances of the BTP as a national police force for the railways, as opposed to a county or metropolitan force.
63. The following table details the sections that are based on provisions in the Police Act 1996, or other legislation where appropriate.

<i>Section</i>	<i>Description of section</i>	<b>Section of Police Act 1996 that provision is based upon</b> (or other Act where appropriate)
18	Establishment of the Authority	Section 3
19	Exercise of functions	Section 6
20	Establishment of police force	Sections 2 and 6
21	Chief Constable; appointment, functions and power to make regulations for removal and suspension.	Sections 11 and 42
22	Deputy Chief Constable; appointment, delegation of Chief Constable's powers and regulations for removal and suspension	Sections 11A and 12A
23	Assistant Chief Constables; appointment, delegation of Chief Constable's powers and regulations for removal and suspension	Sections 12 and 12A
24	Employment, control and attestation of constables	Section 29
25	Employment, control and attestation of special constables	Section 27
25(5)	Liability for wrongful acts of special constables	Section 88
26	Employment and control of police cadets	Section 28
27	Employment and control of civilian employees of the police authority	Section 15

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<i>Section</i>	<i>Description of section</i>	<b>Section of Police Act 1996 that provision is based upon</b> (or other Act where appropriate)
28	Exercise of powers by civilians	Sections 38, 39, 42, 45, 46, 47 and Schedule 4 Police Reform Act 2002
30	Trade union membership	Section 64
31	Jurisdiction of constables	Section 30
33	Police services agreements	Section 132(3), Railways Act 1993
35	Arbitration of disputes by the Secretary of State	Section 132(4), Railways Act 1993
36	Authority regulations for BTP officers	Section 50
36 (2)	Authority regulations for disciplinary proceedings and appeal matters	Sections 84 and 85
37	Authority regulations for special constables	Section 51
38	Authority regulations for police cadets	Section 52
39	Establishment and regulations for the BTP Federation	Sections 59 and 60
42	Secretary of State regulations for the BTP	Sections 50, 51, 52 and 60
43	Secretary of State regulations on disciplinary proceedings and appeal matters	Sections 84 and 85
44	Secretary of State regulations on BTP equipment	Section 53
45	Secretary of State regulations on procedure and practice	Section 53A
46	Conditions of service: BTP Conference	Section 133, Railways Act 1993
47	Code of practice for the Authority	Section 39
48	Code of practice for the Chief Constable	Section 39A
49	Service outside the Police Force	Section 97
50	Authority's policing objectives	Section 7
51	Direction to Authority on policing objectives	Section 37
52	Railways policing plan	Section 8
53	Performance targets	Section 38
55	Three-year strategy plans	Section 6A
56	Reports by the Chief Constable	Section 22

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<i>Section</i>	<i>Description of section</i>	<b>Section of Police Act 1996 that provision is based upon</b> (or other Act where appropriate)
57	Annual report by the Authority	Section 9
58	Other reports to the Secretary of State	Sections 43 and 44
59	Police statistics	Section 45
60 and 61	Inquiries	Section 34 Police Act 1997
62	Public consultation	Section 96
63	Inspection of the police force and publication of reports	Sections 54 and 55
64, 65 and 66	Actions after adverse inspection reports, remedial direction and action plan	Sections 40, 41A and 41B
67	Senior appointment: delegation of Secretary of State functions to the Chief Inspector of Constabulary	Section 54(3A)
68	Offences: assault and impersonation of a constable	Sections 89 and 90
70	International assistance	Section 26
71	Exercise of functions by the Secretary of State	Section 36
<i>Schedule 4, Paragraph</i>	<i>Description of Provision</i>	<b>Section of Police Act 1996 that provision is based upon</b> (or other Act where appropriate)
1 and 2	Appointment of members	Section 4 and Schedule 2, paragraph 1
3	Tenure of members	Schedule 2, paragraph 15
4 and 5	Chairman and deputy chairman	Schedule 2, paragraphs 9 and 9A
7	Disqualification of members	Schedule 2, paragraph 11 and 14
9	Code of practice for standards of conduct for members	Section 50 of the Local Government Act 2000
10	Staff of the Authority	Section 15
11	Appointment of Treasurer	Section 112 of the Local Government Finance Act 1988
11	Appointment of Clerk	Section 16 and Section 4 of the

<b>Schedule 4, Paragraph</b>	<b>Description of Provision</b>	<b>Section of Police Act 1996 that provision is based upon</b> (or other Act where appropriate)
		Local Government and Housing Act 1989
15	Validity of proceedings	Schedule 2, paragraph 23 and 24
16, 17 and 18	BTP Fund and Accounts	Section 14
19	BTP Budget	Section 19
21	Members' remuneration, allowances etc	Schedule 2, paragraph 25A
23(2)	Payment for liability of wrongful acts of constables	Section 88
23 (3)	Rewards for diligence	Section 31
28	Acceptance of grants, loans and other payments	Section 93

***Section 18 & Schedule 4: The British Transport Police Authority***

64. **Section 18** gives effect to Schedule 4. This Schedule deals with membership of the Authority and contains requirements about its proceedings and details about financial matters, including remuneration and pension arrangements.

**Membership of the Police Authority**

65. The Secretary of State will be responsible for appointing the members of the Authority, including the chairman and vice-chairman. It is envisaged that the Authority will normally consist of 13 members. Paragraph 1 restricts the number of members between 11 and 17, although the Secretary of State may by order change these numbers after consulting with the Authority. Paragraph 2 provides that the Authority's membership should include persons who can provide knowledge and experience of the issues that concern passengers, the railways industry, railways employees and the regions.

**Pensions**

66. **Paragraphs 24 to 26** make provision in relation to pensions. Paragraph 24 enables the Secretary of State to make amendments to the occupational pension scheme for constables of the Authority. The scope of amendments would be limited. The provision intends to enable amendment of the trust documentation for the scheme, to recognise the new status of the Authority and its relationship with the Secretary of State, but not to provide for changing the pension benefit structure or winding up the scheme. Any amendments, on which there would be prior consultation with the scheme trustees, would be consistent with the members' historic protected rights under Schedule 11 to the Railways Act 1993.
67. **Paragraph 25** enables the Authority, with the Secretary of State's consent, to set up new arrangements to provide for retirement benefits for staff.

***Sections 21-26: Senior officers and constables of the BTP***

68. **Sections 21** (Chief Constable), **22** (Deputy Chief Constable), **23** (Assistant Chief Constables), **24** (constables), **25** (special constables) and **26** (cadets) make provision so that the BTP will have the same ranks as Home Office police forces under the Police

Act 1996. These sections also provide that these officers' functions, appointments and other associated matters are to be based on the provisions of the Police Act 1996.

69. Only where necessary to meet the specific needs of the BTP do the provisions in the Act differ from the Police Act 1996. Provision made by regulations under the Act will have to follow the Police Act 1996, and any regulations made under that Act. The BTP regulations can only make different provision to meet the specific circumstances of the BTP. This means that should the Secretary of State make regulations regarding the suspension and removal of the senior officers of the BTP, then such regulations would seek to replicate the existing provisions in the Police Act 1996, any regulations made under that Act and only differ to take account of any specific needs of the BTP.
70. A BTP constable or special constable appointed under section 24 or 25 need only be appointed in England & Wales or in Scotland to be considered a constable throughout Great Britain.
71. [Section 25\(5\)](#) covers liability for the wrongful acts of BTP special constables when on BTP business. Special constables, unlike constables, are not employees of the Authority, and liability does not fall on the Authority via their employer's contractual responsibility. The section provides that liability for any wrongful acts committed by BTP special constables in the course of their duties rests with the Chief Constable. The section also allows the Chief Constable to pay out of the BTP Fund any damages or costs arising from this conduct.

### ***Section 28: Exercise of powers by civilians***

72. [Section 28](#) provides that the provisions of the Police Reform Act 2002 that relate to police powers and duties conferred on civilians shall apply to the BTP. As a result the Chief Constable will be able to designate suitably skilled and trained employees of the Authority who are under his direction and control as different types of civilian officers with certain powers and duties. The powers and duties are detailed in Schedule 4 to the Police Reform Act 2002. Such civilians can be designated as: community support officers; investigating officers; detention officers; and escort officers.
73. Powers which can be conferred on community support officers include the power to issue a range of fixed penalty notices relating to anti-social behaviour; the power to request a name and address from a person committing a fixed-penalty offence or behaving in an anti-social manner; and the power to detain, for a limited period awaiting the arrival of a constable, a person who fails to comply with the request to give their name and address.
74. Powers which can be conferred on investigating officers include those that would be needed to support the work of civilian investigating officers in specialist areas, such as financial crime, and are mainly linked to entry, search and seizure. They include the right to apply for and be granted search warrants under the Police and Criminal Evidence Act 1984; and the power to execute warrants, to enter property and to seize and retain things for which a search has been authorised.
75. Powers which can be conferred on detention officers include the power to require defined categories of persons to attend a police station to have their fingerprints taken; the power to carry out non-intimate searches of persons detained at police stations and to seize items found during such searches; and the power to carry out intimate searches in the same limited circumstances that are applicable to constables.
76. Powers which can be conferred on escort officers include the power to transport arrested persons to police stations, and between a police station and another location specified by the custody officer. An escort officer can also be placed under a duty to prevent a detainee's escape.
77. By virtue of section 28(2)(f), civilians designated by the Chief Constable will be able to carry out their functions in any place in England and Wales where a BTP constable

has jurisdiction under section 31(a) - (f). This includes, but is not limited to, railway stations and track. They will also be able to operate outside the railways elsewhere in England and Wales if the matter is connected to the railways.

### ***Section 29: Terms of employment***

78. **Section 29** is designed to ensure that the Authority's employment practices fall within the criteria set by the Secretary of State. The BTP's officers will hold the office of constable and also be employees of the Authority. In transferring their employment from the SRA to the Authority their existing terms and conditions of employment will be protected. Thus far the Secretary of State has retained an overarching control on BTP constables' and civilians' pay through the SRA's financial framework. This section will enable the Secretary of State to ensure that the Authority maintains pay parity for BTP constables and civilians with their Home Office colleagues.

### ***Section 31: Jurisdiction***

79. The BTP's main duties consist of public policing, exactly like a Home Office police force. However, unlike a Home Office force, almost all of the BTP's duties, and in particular its routine patrols, occur on private property, albeit property to which the public may have access i.e. railway stations and trains. The BTP's existing jurisdiction on this private property flows from a combination of a 1949 private Act of Parliament<sup>1</sup> and numerous private agreements between the SRA and the railway companies. Most operators of railway vehicles and certain railway assets are required under the Railways Act 1993 to have a licence. It is a condition of those licences that the operator must enter in to an agreement with the SRA to engage the services of the BTP on its property. It is these agreements, combined with the 1949 Act that gives the BTP the right to police most railway property.
80. **Section 31** gives the BTP a wholly statutory railway jurisdiction throughout England, Scotland and Wales. Within this jurisdiction a BTP constable has the powers and privileges of a Home Office constable. The jurisdiction extends over all railway property. It also extends outside railway property (a town high street for example) throughout Great Britain in relation to railway matters. This jurisdiction would, for example, allow a BTP constable to pursue a person who commits an offence on the railways but then absconds from railway property.
81. In order to allow the BTP to police railway property on a day-to-day basis, section 31(2) & (3) gives the BTP constable a statutory right to enter and police certain defined areas of railway property.
82. On property not listed in section 31(3), the BTP constable is subject to the same restrictions that apply to a Home Office constable. In particular, an officer would be unable to enter private property unless invited, holding a warrant, or exercising some other right of entry (in another Act of Parliament for example).

### ***Section 32: Prosecution***

83. Normally prosecutions for most criminal cases investigated by the BTP are referred to the Crown Prosecution Service. However the BTP does prosecute minor offences particularly those under the railway bye-laws and minor road traffic violations. This section allows for this to continue.

### ***Sections 33-35: Police Services Agreements***

84. The BTP will continue to be funded by the railway industry. Certain operators will continue to be required to engage the police services of the BTP, while other operators will retain the choice. Section 33 provides for a system of Police Services Agreements

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<sup>1</sup> Section 53 of The British Transport Commission Act 1949

("PSAs"), that will act as the means by which the financial arrangements between the Authority and railway operators are calculated and set out. Section 34 gives the Secretary of State power to make orders requiring certain railway operators to enter into a PSA. Where an operator is required to enter into such an agreement but fails to do so, it will commit an offence if it then provides railway services, as defined in section 75(2).

85. [Section 35](#) makes provision on disputes relating to PSAs. Similar provision is currently contained in the Railways Act 1993, paragraph 6(b) of the British Transport Police Force Scheme 1963<sup>2</sup>, and associated non-statutory rules. Disputes will be determined by the Secretary of State or a person nominated by him, with section 35(7) providing a means of appeal to the High Court from the Secretary of State's determination on a point of law.

### ***Section 36-45: Police Regulations***

86. The Home Secretary has powers under the Police Act 1996 to make regulations regarding the government, administration and conditions of service in Home Office police forces.
87. These regulations do not apply to the BTP. Instead the SRA, as employer of the force, applies similar provision to BTP constables through other means, notably conditions of employment and Force General Orders. Sections 36 (Police regulations: General), 37 (Police regulations: special constables), 38 (Police regulations: cadets) and 39 (British Transport Police Federation) enable the Authority to make regulations that are consistent with the equivalent regulations that apply to Home office police officers. Such BTP regulations may only differ from the regulations made under the Police Act 1996 to meet the specific needs of the Force.
88. [Section 40](#) provides that the Authority can only make regulations if the Chief Constable and the staff associations have approved the draft. Any such regulations would also need the prior approval of the Secretary of State. This will ensure that the regulations proposed by the Authority do not differ unduly from regulations made under the Police Act 1996.
89. [Section 42](#) enables the Secretary of State to make statutory regulations in relation to the BTP. This power would be used sparingly in circumstances where the Authority is unable to make regulations itself. These regulations would override any incompatible provisions of the regulations made by the Authority. The Secretary of State would be required to consult the Authority, the Chief Constable and BTP staff associations before making such regulations.
90. [Sections 44](#) (equipment) and [45](#) (procedure and practice) enable the Secretary of State to make statutory regulations under powers in the Police Act 1996. These regulations may extend to Scotland, even though the Police Act 1996 covers only England and Wales. This is to ensure that BTP equipment and procedures are harmonised across all the BTP's areas of operation.

### ***Section 46: Conditions of service: Transport Police Conference***

91. [Section 46](#) specifies that where either the Secretary of State or the Authority are making regulations or taking a decision about the conditions of service of BTP constables, they must first refer the issue to the BTP "Conference". This is a forum consisting of an equal number of individuals nominated by the BTP Federation and the Authority to consider such issues and make recommendations that the Secretary of State or the Authority shall have regard to. An independent arbitrator can be appointed by either the Conference or the Secretary of State to make recommendations on behalf of the Conference if it is unable to agree.

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<sup>2</sup> As set out in the Schedule to The [British Transport Police Force Scheme 1963 \(Amendment\) Order 1994 \(S.I. 1994/609\)](#)



***Sections 47-49: Codes of Practice and service outside the BTP***

92. The Police Act 1996 allows the Home Secretary to issue codes of practice for local police authorities and chief constables that relate to the discharge of their functions. Sections 47 and 48 apply these Codes to the Authority and the BTP respectively, but also allow the Secretary of State to issue further codes to allow for the specific circumstances of the BTP.
93. **Section 49** replicates provisions in the Police Act 1996. BTP constables, like their Home Office counterparts, may temporarily serve with other police forces. This section allows the Secretary of State to make regulations to ensure that BTP officers on temporary service with another police force are not penalised on their return to the Force, i.e. they can retain promotion or service benefits obtained while on service outside the BTP.

***Sections 50-55: Planning***

94. **Sections 50** (Policing objectives: Authority), **51** (Policing objectives: Secretary of State), **52** (Railways policing plan), **53** (Performance targets) and **55** (Three-year strategy plan) are based on provisions of the Police Act 1996. Only where necessary to meet the specific needs of the Authority and the BTP do these provisions differ from the Police Act 1996. This is to ensure that the Authority operates in the same framework of governance as Home Office police authorities.
95. Unlike police authorities established under the Police Acts 1996 and 1997, the BTP and its Committee are not subject to a “best value duty” under the Local Government Act 1999. However on a day-to-day basis, they act as if they were and apply the practices and principles of “best value” to the BTP. **Section 54** (Performance directions) gives the Secretary of State the power to direct the Authority to apply any requirement that he could make in respect of a “best value authority” under the 1999 Act and so retain the current position regarding the BTP and “best value”.

***Sections 56-61: Information etc***

96. **Sections 56** (Reports by Chief Constable), **57** (Annual report by Authority), **58** (Other reports to Secretary of State) and **59** (Statistics) are based on provisions of the Police Act 1996, regarding information that the Authority and Chief Constable are to provide to the Secretary of State, and in certain instances, lay before both Houses of Parliament or publish. Only where necessary to meet the specific needs of the Authority and the BTP have the corresponding provisions in the Police Act 1996 not been followed. **Sections 60** and **61** (Inquiries) are based on provisions in the Police Act 1997 and allow the Secretary of State to set up an inquiry into any matter, most likely a major incident or serious crime, that was handled by the BTP.

***Section 63-67: Inspection***

97. Her Majesty’s Inspectors of Constabulary (as a body corporate known as HM Inspectorate of Constabulary - HMIC) inspect and report to the Secretary of State on the efficiency and effectiveness of all Home Office police forces under provisions in the Police Act 1996. These provisions also allow the Secretary of State to give certain directions to a Police Authority where HMIC consider that the whole or any part of the relevant police force is not efficient or effective, or will cease to be so unless remedial measures are taken. The BTP have not fallen under the statutory remit of HMIC in the past, but the BTP Committee has invited HMIC to undertake detailed assessments of the operational performance and organisation of the BTP every three years applying the same standards as for Home Office police forces.
98. **Section 63** (Inspection) places a statutory duty on HMIC to inspect and report to the Secretary of State on the BTP, both regularly and in response to a specific request. **Sections 64** (Action after adverse inspection report), **65** (Remedial direction) and **66** (Action Plan) provide the Secretary of State with powers of direction following an

adverse HMIC report on the BTP. These sections, modelled on similar provisions in the Police Act 1996, enable the Secretary of State to direct the Authority to take specified actions or ask it to produce an action plan to remedy any Force deficiencies. The procedures, including consulting with the Authority and Chief Constable, will apply to the Secretary of State regarding the BTP in the same way as they apply to Home Office police forces.

99. The main difference with Home Office police forces will be that the Authority will continue to meet the full costs of HMIC inspections of the BTP. This is in line with other non-Home Office police forces such as the Ministry of Defence Police Force, the UK Atomic Energy Authority Constabulary and the Isle of Man Police Force. Inspections of Home Office police forces are funded centrally.
100. The HMIC in England and Wales will continue to be responsible for inspections of the BTP as a whole. Within Scotland, HMIC (Scotland) will be given a statutory duty to inspect the BTP and report to the Secretary of State in so far as the BTP operates in Scotland.
101. [Section 67](#) (Senior appointment: delegation of function) is also modelled on provisions in the Police Act 1996. This provides the Secretary of State with a power to delegate his approval of the senior appointments in the BTP (under sections 21, 22 and 23) to HMIC.

### ***Section 73: transitional and incidental provision***

102. [Section 73](#) contains powers to make transitional provisions, including to a relevant pension scheme to ensure continuity following the establishment of the Authority. For example, subsection (3)(g) would enable modifications to be made to the procedural or structural arrangements of staff pension schemes (excluding benefit/contribution/funding structures) as a consequence of the new relationship between the Authority and Secretary of State. Subsection (3)(f) would enable existing enactments about pension schemes to have immediate effect, e.g. to apply the provisions of Section 16 of the 1995 Pensions Act covering pension members' rights to select trustees.

### **Public sector financial and manpower cost**

103. The measures relating to the BTP will not require additional direct public expenditure, since the BTP will continue to be funded by the railway industry. The additional administrative cost of a police authority of 13 members over the cost of the current Committee of 9 is estimated at £50,000 per annum. This compares to the BTP's total annual budget of £136 million in 2003/04.

### **Human Rights assessment**

104. The BTP provisions of this Act are considered to be compatible with the Convention. Although BTP constables will be given the right to enter "private" property such as railways stations and rail vehicles, which engages the Article 8 right to a private life and the Article 1 of the First Protocol right to the peaceful enjoyment of possessions, it is considered that any such interference is justified. The exercise of this power is limited to defined pieces of railways property, and is available to BTP constables so that they may ensure public safety, and prevent crime and disorder.
105. Certain persons, such as train companies, will be required by order made under provisions in this Act to enter in to PSAs with the new Authority, and under these agreements payment must be made to the Authority. This engages Article 1 of the First Protocol, which protects the economic interests of a person running a business. It is considered that any interference this obligation causes with this right can be justified on the basis that it is in the general interest that the railways are policed, and that if the Authority were not funded then it could not make provision for a police force for the railways.