

POLICING AND CRIME ACT 2009

EXPLANATORY NOTES

TERRITORIAL EXTENT AND APPLICATION

Part 7 – Aviation Security

Section 80 Policing at airports and Schedule 6 Amendment of Part 3 of the Aviation Security Act 1982

464. Part 3 of the ASA presently deals with the policing of aerodromes that have been designated for policing purposes. The amendments made by the Act make provision relating to the policing of all aerodromes to which the new Part 2A applies (other than those which have been excepted by order). An explanation of the aerodromes to which the new Part 2A applies is given at paragraphs 386 to 389. These notes provide a general overview of Part 3 as amended and then consider the individual amendments in more detail.
465. The number of UK aerodromes meeting these criteria will vary in accordance with day to day operations, but presently around 60 UK aerodromes would meet these qualifying criteria. Of these, nine are designated for policing purposes.
466. Under the existing terms of sections 25B(1) and (2) of the ASA, the effect of designating a UK aerodrome in accordance with section 25(1) of the ASA is that the manager of the aerodrome, the relevant police authority and the chief officer of police for the relevant area are required to enter into a police services agreement (“a PSA”). A PSA is an agreement which must stipulate:
- the level of policing to be provided for the aerodrome;
 - the payments to be made by the manager of the aerodrome in connection with that policing and, if such payments are to be made, their amount, or the manner in which they are to be assessed;
 - the accommodation and facilities (if any) that are to be provided by the manager in connection with that policing.
467. The ASA presently provides that, if the persons responsible for the development of a PSA are unable to reach agreement in relation to its terms, construction or operation the matter may be referred to an independent tribunal, which may make a determination on the matter.
468. The proposed amendments to Part 3 of the ASA will essentially remove the current system of designation. This system of designation will be replaced with a requirement that all qualifying aerodromes having an ASP which specifies that policing measures are required at the aerodrome must develop a PSA. This requirement is contained at section 25B(1) of the ASA, as amended by the Act. It will continue to be the case that PSAs must specify the level of policing to be provided, must specify the amount of any payments to be made by the aerodrome manager, or the manner in which their amount is to be assessed, and the accommodation and facilities (if any) that are to be provided by the manager in connection with that policing.

469. The manager of the aerodrome, the police authority for the relevant area, and the chief officer of police for that area will continue to be the persons responsible for the development of PSAs in respect of the relevant aerodromes. In the event that they are unable to agree on the terms of the PSA, the matter may be referred to the Secretary of State to provide a determination on the terms of the PSA (sections 29A to 29E). Aerodrome managers will not be required to pay for all police services provided at an aerodrome. Section 25E(2)(c) provides that the persons determining the terms of a PSA must have due regard to the extent, if any, to which the costs incurred by the police authority in connection with the policing provided for the aerodrome are, or are likely to be, met by any person other than the manager of the aerodrome.
470. The nine aerodromes presently designated for policing purposes currently pay approximately £80m per annum in respect of policing services provided at these aerodromes. In the main, these nine aerodromes are some of the larger aerodromes in the UK, and all at present require a dedicated police presence. A dedicated police presence is not necessarily required at all UK aerodromes, and where such a presence is required, it is expected that the level of policing services provided at presently non-designated aerodromes will, on average, be lower than the average level of policing services provided at designated aerodromes. It may also be the case that following introduction of the Risk Assessment and Aerodrome Security Planning processes (described at paragraphs 380 – 383 of these notes), security stakeholders at aerodromes presently designated for the purposes of policing may find their analysis suggesting that the levels of policing services provided at the aerodrome should be varied. Further information relating to costs is contained in the Department for Transport's Impact Assessment which is available on the Departmental website.
471. **Section 80** gives effect to provisions contained within Schedule 6. These amend provisions in Part 3 of the ASA.

Paragraphs 1-5 of Schedule 6 Amendment of Part 3 of the Aviation Security Act 1982

472. **Schedule 6** amends Part 3 of the ASA. The general effect of this change has already been described.
473. **Paragraph 2** of Schedule 6 repeals section 25 of the ASA, which currently permits the Secretary of State to designate aerodromes.
474. **Paragraph 3** of Schedule 6 repeals section 25A of the ASA. The practical effect of this will be to remove the requirement contained in this section that the manager of a designated aerodrome and the chief officer of police consult with security stakeholders in relation to a range of stipulated matters. These include: measures required to be taken to comply with, or take account of, security directions taken under sections 12, 13, 13A and 14 of the ASA (see paragraph 387 of the explanatory notes for further information regarding these requirements); any national threat assessment; guidance issued by the Secretary of State relating to the policing of the aerodrome; other measures to be taken in relation to policing of the aerodrome; the extent to which security measures are being undertaken by security stakeholders other than the police; and the level of policing required at the aerodrome.
475. The requirement to consult on matters described at paragraph 474 of these notes is replaced by the requirement to conduct a multi agency risk assessment contained in section 24AC.

Section 25AA Meaning of relevant aerodrome

476. The aerodromes to which Part 2A applies will, as a minimum, be those meeting the criteria specified in paragraphs 386 of these notes.

Section 25B Police services agreements

477. This section sets out which aerodromes are required to have a PSA and what a PSA must contain.
478. The effect of section 25B(1) is that aerodromes which have an ASP specifying policing measures must also have a PSA. There is a limited exception in subsection (2). There is no requirement for a PSA to be in force in the period of three months following agreement on the first ASP.
479. Aerodromes that have an ASP that does not specify policing measures are exempt from the requirement to have a PSA. Although the requirement for dedicated policing will be a matter for local determination, the Government expects that a significant number of those aerodromes eligible for inclusion in the UK NASP (presently around 60) may not require a dedicated police presence.
480. Section 25B(3) specifies the information which, as a minimum, a PSA must contain.
481. Section 25B(5) provides that an aerodrome manager must supply the Secretary of State with a copy of the PSA upon request by the Secretary of State. The Secretary of State will not routinely request copies of PSAs. In practice, the Secretary of State will use this in the event of a specific concern relating to the policing of an aerodrome or associated payments.

Section 25C Police services agreements: duration etc.

482. This section provides for PSAs to end on 31 March (the end of the financial year). It does not specify a maximum period for which a PSA may operate, so a PSA could cover more than one financial year. Section 25D does, however, require the manager of the aerodrome, the representative of the police authority for the relevant police area and the chief officer of police for that area to keep the PSA under review.
483. The section also deals with the date when PSAs must begin. There is a distinction between the first PSA and other PSAs. The first PSA must come into force on the day on which the requirement to have the PSA first applies. Subsequent PSAs must normally come into force on 1 April.
484. A requirement to have a PSA may cease to apply to an aerodrome because another ASP which does not contain policing measures comes into force. That ASP could then be varied to include policing measures. Subsections (4) and (5) make special provision for this case so as to ensure that the PSA runs from the date when the variation takes effect and the aerodrome is once again required to have a PSA.
485. The discretionary power at subsection (6) will allow the Secretary of State to direct that a PSA is to come into force at an alternative date to those provided for at subsections (2) to (5) where a dispute between parties necessitates this.
486. The practical effect of the amendment made by paragraph 12(3) of Schedule 6 is that an aerodrome which ceases to be a relevant aerodrome for the purposes of Part 2A of the Act but which then becomes a relevant aerodrome again is granted a three month 'grace period' between the point at which an ASP is agreed and the point when the requirement to have a PSA in force recommences.

Section 25D Review of police services agreements

487. This section provides the aerodrome manager, the representative of the chief officer of police and representative of the police authority for the relevant area with a power to vary the terms of a PSA. In practice, events which could trigger the variation of a PSA could include, for example, a sustained change in the national threat level or a change in the scale of operations at an aerodrome.

Section 25E Discharge of functions of relevant persons in relation to police services agreements

488. This section sets out those matters which must, as a minimum, be considered in the formulation of PSAs.
489. Section 25E(2)(c) requires the relevant persons to have due regard to the extent to which costs incurred by the police authority in connection with the policing of the aerodrome are likely to be defrayed from sources other than the aerodrome manager.

Paragraphs 6-9 of Schedule 6 Amendment of Part 3 of the Aviation Security Act 1982

490. Sections 26-29 of the ASA are amended by the provisions in paragraphs 6 to 9 of the Schedule.
491. Section 26(1) of the ASA currently provides that a relevant police constable is entitled to enter any part of a designated airport. Section 26(2A) sets out the matters which the chief officer of police must take into account when making arrangements for the policing of the airport. Section 26(2B) requires the manager of the aerodrome to make payments to the police authority in accordance with the terms of a PSA. Section 26(2C) provides that, in the event of there being no PSA in force, the aerodrome manager must make payments to the police authority in respect of costs reasonably incurred by the authority in connection with the policing provided for the aerodrome. However, the aerodrome manager is not required to pay for policing services for which funding from alternative sources has been provided.
492. Paragraph 6(1) to (4) of Schedule 6 amends those provisions so that they apply to all relevant aerodromes (as defined by the new section 25AA) and are consistent with the new arrangements for security planning at airports.
493. Paragraph 6(6) also inserts a new section 26(2CA). This draws a distinction between the position of aerodromes that were designated immediately before the commencement of the new provisions and other aerodromes. In the absence of a police services agreement, aerodromes which were designated will continue to be required to make payments to reimburse the police authority for costs that have been reasonably incurred in connection with the policing provided at the aerodrome. For aerodromes that were not designated, the requirement to reimburse the police authority for any dedicated policing services provided at that aerodrome will not apply until 15 months after the commencement of the provisions (three months after the time when the aerodrome is required to have an ASP).
494. Sections 27, 28 and 29 of the ASA do not specifically relate to security planning at aerodromes but instead relate to prevention of theft, byelaws and the control of road traffic at designated airports. The amendments made by paragraphs 7 to 9 ensure that these provisions will in future apply to all relevant aerodromes (as defined by the new section 25AA).

Paragraph 10 Dispute Resolution

495. Paragraph 10 of Schedule 6 provides for a new dispute resolution process consistent with that provided for under the aerodrome security planning provisions at sections 24AM to 24AR. In essence, this paragraph replaces sections 29A to 29D of the ASA to ensure that, where there is a dispute about PSAs, a determination will be provided by the Secretary of State, rather than by the panel of independent experts appointed by the Secretary of State.

Section 29A Power to refer disputes to Secretary of State

496. This section sets out the kinds of disputes to which the new dispute resolution procedure applies.

497. The requirement referred to in section 29A(2)(a) is the requirement to have a PSA in place where an ASP contains policing measures.
498. Section 29A(2)(d) refers to payments to be made, or accommodation and facilities to be provided, under section 26(2C). Section 26(2C) provides that, where no PSA is in force in relation to an aerodrome, the manager of the aerodrome shall: a) make to the police authority such payments as are necessary to reimburse the authority in respect of the costs reasonably incurred by it in connection with the policing of the aerodrome and b) secure that suitable accommodation and facilities are provided for use in connection with that policing.

Section 29B Powers of Secretary of State in relation to disputes

499. Section 29B(2) provides the Secretary of State with powers to compel parties to take such actions as he or she considers will assist in the resolution of a dispute. These powers provide the Secretary of State with a means of acting to resolve a dispute without providing a full determination as provided for under the terms of section 29C.
500. In practice, it is likely that the requirements imposed under section 29B(2) will primarily be used to ensure that participants in a dispute take action that might assist in the resolution of a dispute. These might include actions such as completing the required security analysis, and attending meetings with supporting materials so that officials can facilitate agreement over the levels of policing resources required at an airport. However, the nature of the provision means that the examples set out above are not exhaustive.
501. Subsections (3) and (4) provide the Secretary of State with a power to require parties involved in a dispute over a PSA to make payments in respect of costs incurred through use of the mechanism described in paragraphs 499 to 500 above. In practice, persons who might be employed by the Secretary of State to facilitate the resolution of a dispute in this regard might include legal professionals, or Her Majesty's Inspectorate of Constabulary. Subsection (4) also provides the Secretary of State with a power to recover costs incurred through officials' involvement in attempts to resolve a dispute. The Secretary of State might use such power to recover costs where he or she considered that it would be inappropriate for the full extent of costs relating to the determination of the dispute to fall to the public purse.

Section 29C Dispute resolution: procedure

502. This section sets out some procedures that the Secretary of State must always undertake when providing a determination in relation to a dispute. With the exception of the minimum requirements set out in this section, the Secretary of State is provided with broad powers to determine how a dispute should be determined.
503. In the case of disputes about police services agreements, subsection (3) requires the Secretary of State to have regard to the matters mentioned in section 25E(2). These are:
- any ASP in force during the proposed period of the PSA;
 - any information given by the security executive group to the aerodrome manager, the chief officer of police or the police authority which is relevant to the PSA;
 - the extent, if any, to which the costs incurred by the police authority in connection with the policing provided for the aerodrome are, or are likely to be, met by any person other than the manager of the aerodrome, and
 - any guidance given by the Secretary of State which is relevant to the discharge by the relevant persons of their functions in relation to PSAs.

Section 29D Dispute resolution: powers

504. This section sets out the powers and duties of the Secretary of State when determining a dispute. The Secretary of State has powers in relation to determining both the contents of a PSA as well as its implementation.

Section 29E Dispute resolution: appeals and enforcement etc.

505. This section provides any party to a dispute on which the Secretary of State has made a determination with a right to appeal that determination to the High Court.
506. Subsection (2) provides that where the Secretary of State imposes a requirement in certain circumstances, or makes a declaration, determination or order, then he or she can with the permission of the High Court seek to enforce it as if it had been a High Court judgment.

Paragraph 11 of Schedule 6: Supplementary Orders

507. Section 30 of the ASA provides the Secretary of State with a power to make orders in connection with an aerodrome becoming, or ceasing to be, a designated aerodrome. In practice, orders made under this section have principally been used to effect the transfer of private forces to local Home Office constabularies and to make associated arrangements. There will no longer be provision for the Secretary of State to designate an aerodrome and it is not considered necessary for section 30 to be retained. It is therefore repealed by paragraph 11 of Schedule 6. A saving provision for orders made under this section is contained at paragraph 15 of Schedule 6.

Paragraph 14 of Schedule 6: Transitional Provision

508. Under the existing terms of the ASA, there are presently nine aerodromes ‘designated’ for policing purposes. Aerodrome managers at these aerodromes are already required to pay for qualifying police services provided in respect of their aerodromes, and PSAs are therefore already in place. This paragraph ensures that the existing requirement for such airports to have PSAs will continue to apply until such time as the new requirement in section 25B(1) (as amended by the Act) takes effect. This paragraph also ensures that any existing PSAs will cease to have effect immediately before the new requirement takes effect. In practical terms, this means that new PSAs will be introduced once the new ASPs are in place. Until such time as ASPs are agreed and new PSAs are required, the existing requirement for designated airports to have a PSA will continue to apply.