

Justice Committee

Railway Policing (Scotland) Bill

Written submission from the British Transport Police

1. Introduction

1.1 British Transport Police (BTP) would like to thank the Committee for inviting evidence relating to the Railway Policing (Scotland) Bill. In previous submissions to the Committee, and in our evidence provided to relevant inquiries and through formal consultation, BTP has unequivocally acknowledged the decision taken by elected members in the Westminster and the Scottish Parliaments following their evaluation of the recommendations made by the Smith Commission. The Force wishes to reaffirm its commitment to working constructively with both Police Scotland and the Scottish Government in delivering its objective to devolve matters related to transport policing in Scotland. The aim of this latest submission of evidence is to offer constructive, professional opinion in relation to the Bill. Its objectives are to assist in developing a devolved position which avoids any detriment to railway policing in Scotland (or other component parts of the UK), minimises risk to passengers, staff and the transportation of freight, and prevent increased costs to train operating companies unless corresponding benefits are realised.

1.2 Given that the Railway Policing (Scotland) Bill is enabling legislation, it is acknowledged that much of the necessary detailed legislation and policy guidance will be produced once the Bill has passed through the legislative process. Our intention is to draw the Committee's notice to those issues that the Force feels ought to be addressed under each of the main headings set out in the Committee's call for evidence. BTP is fully engaged with the Joint Programme Board co-chaired by the Department for Transport (DfT) and the Scottish Government and will continue to support the programme in the delivery of the devolved arrangements by April 2019.

2. The impact, if any, which the devolution of railway policing will have in terms of retaining specialist skills and knowledge built up by British Transport Police officers

2.1 *Maintenance of transport policing ethos*

It has been highlighted in BTP's previous submissions that one of the most challenging questions arising from the proposed devolved model is "...**how in practice the plans to merge the two forces in Scotland will embed and sustain BTP's specialist 'transport policing ethos' within a significantly larger, more complex and diverse organisation?**" Understanding the distinct difference between policing in a transport environment and that in 'geographic' forces is critical to the efficient and effective running of the railways.

2.2 The current specialist approach of BTP has been developed over many years, underpinned by a deep and clear understanding of the unique requirements of the railway and its stakeholders. Organisational strategy is set in close consultation with stakeholders and is driven by the priorities of the railway industry, its passengers and staff. For example, helping to reduce delay and disruption is a specific objective that

does not feature in other force strategies. At the operational level, train operating companies have confidence in BTP's ability to respond swiftly to incidents affecting the smooth running of the railway and its capacity to restore services promptly and safely. This confidence is underpinned by BTP's thorough understanding of the moral obligations of independent policing balanced against the legal impact of its decisions as a commercial 'service supplier'.

2.3 The operational benefit is most obvious in the response to matters that are unique to the railways and its infrastructure. These include amongst other things preventing cable theft, handling complex fatalities and responding to unattended or suspicious items (discussed further at Section 3), where there is well-defined evidence that a non-specialist force is less able to provide the consistent levels of service that a dedicated policing commitment can offer. Analysis¹ has shown that dealing with incidents can take significantly longer if officers inexperienced in railway policing are the first responders. BTP's analysis reveals that offences involving cable theft take on average 33% longer to manage, whilst fatal incidents can take almost 50% longer. We invite the Committee to consider how the specialisms developed in response to these challenges will be preserved and sustained in the future arrangements.

2.4 *Structure and conditions*

Passing legislation to introduce changes to organisational structures, logistics and staff terms and conditions and it clearly possible from a legislative perspective to set staff levels and service level agreements, however it is arguably more complex to replicate organisational culture and attitudes by which to maintain focus on the critical interdependencies that have developed over many years. In the short-term, the transfer of the current group of BTP officers and staff would help preserve the transport policing ethos described above and help retain specialist knowledge, with the associated performance and stakeholder relationship benefits. However, there is the possibility that despite the best of intentions, this might not be sustainable in the longer-term without a) the continued direct strategic leadership and b) the preservation of transport policing as a dedicated specialist operational and business area.

2.5 *Officer and staff retention*

BTP is fully engaged with the Joint Programme Board and has expressed a commitment to ensuring the best possible retention of specialist skills following devolution of transport policing in 2019. Police officers and staff who join BTP have taken the decision to join a specialist police service and are understandably proud of their 'expert' role and the work they do. BTP will provide Police Scotland with all appropriate HR staff forecast data and succession plans to ensure the profile of workforce attrition factors is available at an early stage. At present it remains unclear whether any statutory or contractual redundancy conditions might arise and we look forward to receiving further interpretation and proposals on this specific aspect of the transfer arrangements.

2.6 Notwithstanding that point alone, there is a potential risk however that the current establishment of skilled officers in Scotland could be affected if officers or

¹ BTP 2013 incident analysis

staff decide to retire or otherwise leave the service instead of choosing the option to transfer to Police Scotland. In developing this theme further, BTP officers who are currently posted to BTP's D Division may choose to exercise their right to apply (in the period leading up to April 2019 or immediately afterwards) for vacancies in roles that become available in BTP's other Divisions (i.e. those in England and Wales). Clear options and interim arrangements will need to be considered that balances the entitlement of officers in BTP to apply for vacant positions outside D Division, alongside the need to ensure that D Division does not become under-resourced prior to any devolved model becoming operationally viable. For example, BTP would be open to exploring the possibility of coordinating arrangements for Police Scotland officers to be seconded into vacancies within BTP's D Division during 2018 in order to support transitional arrangements. However, this proposal would place seconded officers under the direction and control of the Chief Constable of BTP in the intervening period and would need to be sanctioned by BTPA and the Joint Programme Board, with necessary agreements put in place to meet jurisdictional, funding and contractual arrangements.

2.7 Providing clear reassurance to officers and staff in respect of the legality and specific terms and conditions of their transfer, pension and other benefits arrangements will be critical in helping maintain staff and officer morale and delivering greater encouragement for them to remain in any revised Police Scotland transport policing structure. These issues are discussed in more detail in Section 7 later in this submission. Assuming arrangements will have to be put in place to enable all existing officers and staff transfer as proposed (i.e., in April 2019), BTP stands prepared to supply staff service and skills profiles to assist Police Scotland with workforce planning responsibilities.

3. The impact, if any, which the devolution of railway policing will have in terms of cross-border security arrangements

3.1 BTP has a responsibility under the expectations set out in the *Strategic Policing Requirement* to collaborate with other police forces and agencies to help maintain national capabilities to counter the threats arising from serious and cross-border threats. BTP is fully integrated in the national serious crime and counter-terrorism network with well-prepared agreements and operational protocols in place to ensure interoperability and intelligence sharing with other police forces and security agencies.

3.2 As part of its own national responsibility, BTP has developed a response to potential terrorist inspired or related threats which is arguably less risk averse than that encountered elsewhere. By using extensive knowledge of the rail environment (including experience developed during the height of the IRA bombing campaigns of the 1990s and the evolving threat from present-day international terrorist acts, as well as knowledge retained from responding to a substantial volume of 'false' incidents) it has proved possible when evaluating ambiguous information to disaggregate 'signal' from 'noise'. As a consequence, the railway has experienced less disruption from critical threats than might otherwise have been anticipated. The active management of risk through a clearly defined and context-specific Strategic Risk Assessment is integral to keeping the national railway network running, delivering a safe and secure railway, and promoting confidence in the use of train

services. Preserving this pragmatic approach to risk management will be fundamental in helping to reduce delays, whilst promoting a safe and secure network, within any future devolved model.

3.3 One of the core principles of BTP's operational approach to counter-terrorism (a principle consistent with the Government's CONTEST strategy) is to ensure that neither public safety nor the business imperatives of the rail industry are compromised by risk aversion. BTP has been instrumental in developing a range of innovative Counter Terrorism initiatives designed to ensure risk aversion, or conversely decision inertia, do not influence unduly the response to terrorism-related events affecting Britain's railway. Some have been developed with the support of colleagues in the DfT to enhance the National Railway Security Programme, or as noted within our firearms capability, with other forces; many represent a unique contribution to the risk management challenge pertaining to mass transit rail. Examples of these initiatives including responding to bomb threats, dealing with suspicious items, identifying suspicious conduct and developing well-rehearsed evacuation procedures will be disclosed to Police Scotland under the Operational Integration strand of the Joint Programme Board. The Committee may wish to explore how the future policing model will ensure that the bespoke methods, developed through tried and tested response to incidents, will be sustained.

3.4 It will be important in any future arrangements to ensure that the approach to policing, security and risk management - on both sides of the border - is fit for purpose and exhibits the high-degree of interoperability appreciated now. Officials will perhaps wish to consider how a devolved model will retain the current seamless network-wide approach to countering terrorism. This point is central to dealing with incidents that are rarely contained within a single force area and can affect numerous rail operators.

4. The impact, if any, on ensuring consistency in delivering passenger safety and maintaining confidence within railway policing

4.1 Jurisdictional arrangements

The wording of the current Bill would create a situation where after April 2019 BTP officers would not have any legal jurisdiction to operate as constables in Scotland. This would obviously create difficulties in policing any railway service that crosses the border, particularly as officers from other Divisions (i.e. those in England and Wales or a part of the Force's specialist teams) will still need to carry personal protective equipment such as TASER type devices or incapacitant sprays, both of which are defined as weapons. It is important for BTP to understand how the legislation will facilitate agreement on any future cross-border joint policing arrangements between BTP and Police Scotland, such as those relating to football or event policing, special movements and cross-jurisdictional investigations. BTP regards this as a key area of risk and have sought urgent clarification as to how this fundamental operational capability is assured in order to inform the future operating model for cross-border services. It is important that the Scottish Government provides clarification of how future jurisdictional agreements are envisioned and will be enacted.

4.2 *Whole network policing*

BTP's responsibilities and accountability includes the totality of the policing environment of Great Britain's rail network. As such, the structure of BTP provides a single point of contact and uniformity in policing standards across the Scottish, English and Welsh railways. Once this moves to a two force model there is the potential for this connectivity, as well as accountability, to become less distinct. This has the potential to introduce confusion about the responsibility for recording and responding to incidents (for example, where the precise location of the commission of an offence is difficult to define). Additionally there may be inadvertent delay in responding to incidents, or deal with consequential effects such as the build-up of passenger numbers further along the route, by loss of a clear single point of contact for the industry and passengers, requiring additional hand over of responsibility and command.

4.3 There is also a real risk that the investigation of crime will become more complicated, and possibly more costly, if the preservation and collection of evidence in one jurisdiction and management of offenders or witnesses in another, presents operational or logistical challenges. Should this lead to the halting of train services to gather necessary evidence or witnesses, any reduction in the quality and consistency of victim care or less-successful judicial outcomes caused by opportunities missed in one jurisdiction or the other, it could lead to reduced public confidence and heighten concern over the safety of using the rail network.

4.4 Confidence to travel in the widest sense applies to everyday policing. Tackling volume crime (primarily theft of passenger property), ensuring the safety of passengers and staff from assault or sexual abuse of whatever category, delivering the security of 'specialist trains' is much more routine (than perhaps is readily understood) on cross border journeys. The policing service is currently delivered in a seamless way, which avoids the need for officers to disembark, and whilst on the one hand protects the travelling public, at the same time this prevents disruption to operators of cross-border services. All passenger service operators in Scotland are also all cross-border train operators. Examples include the regular policing of football supporters travelling between cities and towns in Scotland in to the north of England and vice versa. A further example is the policing of late-night services between border cities and towns to reassure passengers and to stop antisocial behaviour. Specialist train services including nuclear trains, MOD trains and the Royal Train are also currently policed in a continuous manner by BTP operations that consider the implications of the end-to-end route. Introducing new arrangements that necessitate the handing over of command for any of these services will need to be carefully developed. BTP has set out each of these operational challenges in a workshop with colleagues from Police Scotland, the Scottish Police Authority and Scottish Government and await further discussions to understand how future proposals that will mitigate such risks.

4.5 Separation of railway policing could also have important consequences for the current partnership working with the rail industry. It is conceivable that having different police forces, potentially with different or competing strategic priorities, policing the rail network has the potential to affect current partnership working which currently exists with the rail community (e.g. regular level crossing enforcement; graffiti patrol activity; vandalism prevention, etc.). A conceivable consequence is that

stakeholders are less able to exert influence on policing priorities that may be to the detriment of mass transit and freight operation. Legally, charges to PSA holders are required to reflect the nature and extent of the functions likely to be undertaken each year. This requires a highly complex process to be followed for allocating BTP's direct costs and overheads between PSA holders, requiring detailed budget, crime, command and control, passenger footfall and other data. The communication of charges and providing evidence of fair and accurate allocations to all PSA holders is a highly resource intensive activity. Disaggregating funding for Scotland, in particular for overhead allocations, will present additional challenges, requiring separate charging models to be put in place based on industry expectations that similar cost allocation results would be produced. It will be important that such arrangements are not made more complex and that the commercial interests of the industry are afforded the priority they are given currently.

5. The possibility that officers tasked with railway policing in Scotland may be abstracted from their core rail policing duties in order to support wider operational roles within Police Scotland

5.1 Abstraction as described is primarily an issue for Police Scotland and the Scottish Government. BTP will provide advice and guidance where appropriate through the Joint Programme Board.

6. Whether there will be any difficulties in setting up new railway policing agreements with railway operators

6.1 This is primarily an issue for Scottish Police Authority and the Scottish Government to consider. BTP will provide advice and guidance where appropriate through the Joint Programme Board.

7. The implications, if any, for BTP officers who are currently contracted officers when they are transferred to Crown Servant status including any implications with regard to terms and conditions and pensions

7.1 It remains unclear what mechanism will be applied for BTP officers and staff required to transfer to Police Scotland. BTP officers and staff are contracted employees, not Crown Servants, and have complex and long-standing terms and conditions which would need to be considered fully. Contractual rights relating to statutory redundancy or relocation arrangements exist for police officers, which could possibly result associated costs if individuals elect to transfer to posts in England and Wales. In addition some officers and staff hold legacy travel entitlements that pre-date the privatisation of the railways.

7.2 It would be helpful if the Scottish Government was able to provide early clarity on a) the intended design of the workforce transfer process, and b) how it intends to address protected terms and conditions of employment. Ideally, clarity will be provided as a matter of urgency to help BTP manage staff expectations and apprehensions. Once the 'transfer package' is articulated more clearly, accurate staff planning projections will be possible in preparation for any handover.

7.3 Pension arrangements are a further area where the provision of timely and detailed information would assist in reassuring those members of staff that will be affected by the devolved arrangements. It will be necessary to take into account the interests of the constituent pension stakeholders, for example trustees of the relevant Schemes, those in receipt of pensions, contributing staff and representatives of staff associations. These bodies will wish to be satisfied that any new arrangements will not be detrimental to officers and staff, either in Police Scotland or those already in receipt of a BTP pension in England and Wales and the current establishment of officers and staff of BTP's Scottish Division. There remain ancillary safeguarded legacy travel rights that apply to some serving officers, staff and pensioners and understanding how those rights will be safeguarded and protected will be of great interest to affected staff.

British Transport Police
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