I am responding to the invitation from The Scottish Parliament's Justice Committee to comment on the proposed Bill. I do so in three capacities: as Convener of the Friends of the Far North Line (a Rail User Group with over 150 members campaigning for passengers and freight consignors on the route between Inverness and Caithness); as the lay passenger representative on the Office of Rail and Road's Rail Industry Health and Safety Advisory Committee; and as a member of the public who makes frequent use of the rail network both within and furth of Scotland. Before the old Rail Passengers' Council structure was altered in 2005 I was Chairman of its Safety Task Force, and had frequent meetings with the BTP Chief Constable and many serving officers, and had considerable experience of how BTP goes about their work. I am by professional training an actuary, and therefore have an intimate knowledge of risk, its measurement and management.

The Bill has been widely described as "politically driven". It is the nature of politics that opposition parties will argue against a piece of government legislation - a process which is designed to expose weaknesses in the drafting and, ultimately, produce a better Bill. However in this case opposition is being heard from many non-political sources who would not normally voice an opinion. I am particularly concerned that the Assistant Chief Constable of BTP resigned over this issue - a signal, surely, from the most senior serving officer in the Scottish arm of BTP - that he believes the proposal to be wrong. He may, of course, be wrong himself, but his resignation should not be brushed aside as being of no consequence. When a senior figure resigns a warning bell is sounded - one has only to remember Sir Geoffrey Howe in 1990 and only this month Sir Ivan Rogers. A warning bell is not, of course, a signal that a U-turn is the only wise response, but equally it should suggest that a careful re-examination of the benefits and drawbacks of a proposed course of action is needed.

My reading of the Bill and the supporting documentation, together with comment in the public domain leads me to the view that the benefits - which are significant - lie exclusively in the area of organisational structure. There will be cost savings as a level of head-office duplication will be eliminated; there will be public accountability through The Scottish Parliament; there may well be scope for more efficient deployment of officers once the Police Scotland reorganisation has bedded down; there will be one single police force in Scotland with whom Ministers, Officials and members of the public will be dealing.

The drawbacks are almost all operational. "Almost" because one of the most intractable will be the matters of accrued pension rights and associated staff benefits. I shall return to these.

At present BTP delivers a highly specialised and highly efficient service to rail companies and the travelling public. In recent years there has been a very successful focus on specifically railway incidents. BTP has a target for re-opening
the railway within 90 minutes if a non-suspect fatality occurs. This is much sooner than was the case a decade or more ago. The specialist knowledge and experience that leads BTP officers to deliver this is likely to be weakened within Police Scotland which has no such target in areas where it currently deals with a similar non-suspect fatality - a single-car road fatality for example. It is not uncommon for a road routinely to be closed for several hours. Naturally if there are "suspicious circumstances" one would not quibble at this, but the presumption within Police Scotland appears to be that circumstances are deemed to be suspicious until evidence disproving this is gathered - a time-consuming process. BTP's presumption, unless there is clear evidence of a crime, is that a suicide is a sad incident, but not one which requires more than 90 minutes to deal with. I use suicide as an example, but there are many others where the philosophy of BTP differs from that of Police Scotland (or the Home Office police south of the Border). Neither approach is wrong, but because the environments in which they operate are different, with different underlying service requirements (like running a railway) the approaches have to be different. My fear is that, as a much smaller body of officers within Police Scotland, the officers in what is now D division will gradually be subsumed culturally within the larger group, to their, and the railway's, detriment.

Much is made in the accompanying documents that Ministers are aware of this risk, and would wish to ensure that the specialist expertise of BTP is not lost, or its skills diluted, but there is nothing in the Bill actually to prevent this from happening.

At the moment a BTP presence on a cross-border train can deal with an incident anywhere on that train's route. What will happen after the Bill is enacted when an incident - brawling, for example, breaks out on a train travelling north in the Durham area? BTP officers will board at Newcastle and deal with the problem. By the time that this has been done the train in on its way to Edinburgh. Does the train have to make an unscheduled stop at Berwick, still within England and where the Newcastle-based BTP officers still have jurisdiction? Or does it continue to Edinburgh? What happens then - do the on-board BTP officers still have the right to make arrests in England and hand over the culprits in Scotland? This may seem like a teasing question in a first year Law exam, but it exposes a real series of difficulties. At present BTP officers travel the entire length of the GB rail network and carry out their duties despite the fact that Scotland's legal system differs from that of England and Wales. Will this still be the case? May a Police Scotland officer carry out policing duties in Northumberland? My understanding is that Home Office forces in England and Wales guard their patches jealously, and only in the case of major crimes is there routine cross-boundary working.

I now turn to the six bullet points where specific comments are sought.

1 In my view there will inevitably be a gradual diminution of specialist skills and experience. We have only to look at what happened in the railway industry at privatisation. Two factors came into play at the same time. The first was the natural human resistance to change, especially change in the workplace. Many staff (at all levels) in their 50s - those with the experience - took the opportunity of early retirement, or merely sought employment outwith the industry. Nothing can prevent this natural behaviour short of some system of golden handcuffs - highly unlikely to be available in this case. The other factor - less likely here, but not impossible - is
that the new management seriously under-estimate the staffing levels and skills required to deliver the promised service. At privatisation this led to a dramatic shortage of drivers in some areas; is the risk that a similar mis-calculation by senior officers at Police Scotland might find too few coppers on trains or at major stations to deal with trouble a risk too great?

2 I do not regard "cross-border security arrangements" as being put at risk by the proposals. However I do regard cross-border everyday policing matters as being put at risk, as I have described earlier. I am confident that the awareness of terrorist threats nowadays, and the experience of all police forces to combat it, makes any gaps in cross-border counter-terrorist capability minimal. But terrorism is mercifully infrequent; hooliganism is not.

3 Again I do not foresee a difficulty here provided that the officers formerly with BTP remain the officers within Police Scotland who carry out policing duties on the railway. Easy to say, and easy for Ministers to expect, but harder to deliver when there is a flu epidemic among police officers at a particular location and it's "all hands to the pump". I return to this in the next bullet point.

4 I believe that this risk is very significant. Occasionally planned events take place - G8 at Gleneagles being a good example - where the security arrangements required are so stringent that all police leave is cancelled and every officer is needed, either at the location or providing a thinner police presence elsewhere in Scotland. It is impossible to believe that the BTP officers within Police Scotland will somehow be ring-fenced in their duties, inevitably leading to the delivery of a poorer service to the railway and passengers. Worse will be the inevitable occurrence of a non-planned emergency - a terrorist outrage, say - where a blanket police presence is needed. I do not criticize the response, but in such circumstances I would expect to see a proportionately greater presence on and around transport infrastructure than for example, on ordinary streets. Will Gold Command see it that way? Will "ordinary" Police Scotland officers be drafted into Waverley rather than protecting The Scottish Parliament?

5 Any processes will be tricky, and require careful management, but I do not see this as being particularly a difficulty. Railway operators will continue to pay for policing services and will be keen to see that they receive value for money.

6 This whole area is going to be very difficult to resolve satisfactorily, and failure to get it right exposes the risk that, as indicated earlier, staff with not long to serve before retirement may well vote with their feet. The only sensible way will be to continue the status and conditions of employment (including pension provision and perks) of BTP officers as they transfer into Police Scotland. By the nature of things the numbers affected will always be a small percentage of Police Scotland officers, and they will diminish as time passes. New entrants, of course, would join Police Scotland under Police Scotland terms and conditions as Crown Servants. It must be borne in mind that every serving BTP officer chose to be a member of BTP, and not of a Home Office (or Police Scotland) force. A conscious decision to "work on the railway" was made, and this motivation must be acknowledged and respected. The risk of officers walking away, taking vital experience with them, is the greatest risk posed by this proposal, and everything possible must be done to ameliorate it.
Telling serving officers that they must be transferred into Crown Servant status, with the insecurity of stable family life that that implies, and into a poorer pension arrangement could have a disastrous effect on morale at precisely the time when old hands are needed to pass on skills and keep morale high. Change inevitably brings risks: successful change happens only when risks are measured, understood and managed. I see little evidence that this is happening.

In all the foregoing I have referred to "police officers". It should not be overlooked that in addition to uniformed officers BTP also has civilian support staff whose willingness to continue employment within a much larger organisation should not be taken for granted. Like their uniformed colleagues they may well have sought employment within a small, specialised, force offering greater scope for career advancement and promotion. The position of Special Constables should be considered. Some years ago GNER, then the operator for long-distance services on the East Coast Main Line, successfully recruited several of their on-board staff to train as Special Constables. I have no current knowledge of whether cross-border Train Operating Companies (Virgin Trains East Coast, Virgin Trains, Transpennine Express and Cross Country Trains, as well as Caledonian Sleeper) or the ScotRail Alliance currently have employees who are Special Constables, but questions should be asked about how they would fit in to Police Scotland, and indeed how willing they would be to continue as Specials in the new environment. Indeed a survey of all BTP officers and civilian support staff would be useful. If it is found that more than an insignificant number of those likely to affected turn out to be disaffected then the whole proposal, despite its apparent attractions set out at the beginning of this Response, must be called into question.

Mike Lunan
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