

## Justice Committee

### Railway Policing (Scotland) Bill

#### Written submission from the British Transport Police Authority

1. The British Transport Police Authority (the Authority) is fully committed to working with the Scottish and UK Governments, the British Transport Police (BTP), the Police Service of Scotland, the Scottish Police Authority and the railway industry to devolve transport policing in Scotland in line with the no-detriment principles of the Smith Commission.
2. The transfer of rail policing in Scotland has potentially significant financial and operational implications for the Authority and Force. Our involvement in this project has two aims, firstly to address the potential impacts of devolution on the remainder of BTP and secondly to deliver a smooth devolution of BTP Scotland to Police Scotland.
3. The Committee asks for evidence on a number of important issues. The practical implications of many of these were outlined in part 2 of the Authority's submission to the Public Audit Committee of the Scottish Parliament to assist its review into *Audit and Accountability Arrangements for Further Devolution of Powers*<sup>1</sup>. These are attached to the end of this submission for ease of reference.
4. We have been seeking ways to address these and other practical implications. Participating actively through membership of the joint programme board that oversees implementation, we are also involved in the project workstreams on range of matters relating to workforce and pensions, governance, finance and assets and liabilities.
5. An immediate priority is to fully understand and manage the risks that may emerge throughout the transition process and those that may emerge post-devolution. How we mitigate and minimise risks will be the challenge as we work through the issues in partnership in the coming months. In particular, risks such as:
  - a. The effect of changes to jurisdictional or oversight arrangements on our ability to respond to incidents and minimise delays to the industry and passengers;
  - b. Effect on the formula for allocating charges and any impact on existing contractual arrangements to operators to arise from transition;
  - c. Loss of specialist skills required to maintain the current standard of policing for cross-border service; and
  - d. A perception of a reduction in the service to passengers and the rail industry.
6. Safeguarding the remainder of BTP, and the specialist service it provides to railway operators and passengers, must be at the heart of the devolution project. We are encouraged that in its Policy Memorandum published to accompany the

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<sup>1</sup> <http://btpa.police.uk/livesite/wp-content/uploads/2015/04/20150417-BTPA-Evidence-to-the-Public-Audit-Committee.pdf>

Railways Policing (Scotland) Bill the Scottish Government recognises the need for a strong focus on maintaining railways policing expertise within the broader Structure of Police Scotland. The Scottish Government also recognises the importance of providing early clarity to BTP officers and staff on their terms and conditions following integration.

7. We continue to work with the Scottish Government and Police Scotland to ensure they are aware of the way we currently do our business so they can ensure that service levels and the specialist capabilities and skills of the BTP are maintained post-transition.

BTPA  
31 January 2017

**The Authority's submission to the Public Audit Committee of the Scottish Parliament to assist its review into *Audit and Accountability Arrangements for Further Devolution of Powers***

**Part 2 – Practical implications of devolution**

1. The Smith Commission is a cross-party agreement to give more powers to the Scottish Parliament. This includes transferring responsibility over the functions of BTP in Scotland, and the political will to make that happen is clear. Analysis is needed on the practicalities of this process, bearing in mind the need to prevent detriment to the UK as a whole or any of its constituent parts – a guiding principle of the Smith Commission.<sup>2</sup> The UK Government has already identified that one area in particular, counter-terrorism, will need close attention. In its advice to the Commission, it stated:

“BTP has a distinct counter terrorism policing capability with respect to the security of the railways. This capability is a resource which can currently be used on a GB wide basis, reflecting the fact that there is a GB wide rail network which includes the operation of cross border services between England and Scotland. If the role of BTP in Scotland were to be brought within the remit of Police Scotland further detailed consideration would need to be given to how this distinct counter terrorism policing role would be carried out, including for example, whether and how Police Scotland might provide this role, how cross border services would be policed, and how a transport unit of Police Scotland and the remainder of BTP would coordinate on counter terrorist policing on the rail network. In light of this, and the fact that powers in relation to terrorism are a reserved area, ensuring that the current expertise and capability of BTP in the area of counter terrorism policing across the whole rail network is retained and is not diminished by any transfer of BTP functions in Scotland to Police Scotland is an area where further consideration of the impact of the devolution proposal is required.”<sup>3</sup>

2. Resilience and support for railway policing in Scotland is provided effectively from the rest of BTP since its training and procedures are directed towards policing the railway rather than a geographic area. BTP's risk-based approach with respect to managing incidents is a railway policing skill rather than a geographic policing one. Re-opening rail lines and resuming train services after a fatality is a railway policing skill. Understanding an incident at Euston in terms of its impact on passenger safety south of Glasgow is a railway policing skill. These skills differentiate BTP officers from their counterparts elsewhere.
3. The jurisdiction of BTP is designed so that the skills and attention of the Force are focused on its primary objective, and that its resources are not routinely

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<sup>2</sup> Report of the Smith Commission for further devolution of powers to the Scottish Parliament, 27 November 2014 – (page 9) [https://www.smith-commission.scot/wp-content/uploads/2014/11/The\\_Smith\\_Commission\\_Report-1.pdf](https://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf)

<sup>3</sup> The UK Government Analysis for the Smith Commission - <https://www.smith-commission.scot/wp-content/uploads/2015/01/UKGovernmentanalysisfortheSmithCommission.pdf>

deployed to other policing activities.<sup>4</sup> This delineation gives the rail industry the confidence that the police force they fund will be dedicated to its functions.

4. Transferring railway policing is not the same as merging eight police forces with the same function. There are centralised police support functions provided by BTP which would need to be replicated in Scotland in an eventual merger with Police Scotland, perhaps in the form of a segregated unit<sup>5</sup>. This will need to be reconciled with budget pressures and the need to ensure value for money. Audit Scotland or HM Inspectorate of Constabulary (Scotland) might wish to examine this more closely.
5. A merger requires decisions about the future of the people and assets of BTP Scotland. The practicalities of a potential transfer of personnel will need to be examined, bearing in mind that BTP officers have different conditions of service to those elsewhere. Another important question is what would happen to pension arrangements; as a non-Home Office police force, BTP employees are part of the railways pensions arrangements. There is a funded pension scheme, and would require the participation of a new sponsoring employer, as well as consultation with trustees. Decisions on these and other issues, including apportioning of assets and liabilities, will require actuarial and legal advice.
6. The question of funding also needs to be addressed, particularly what happens to the formula for allocating charges to those who operate and provide services on the network. This cost-allocation model – which as mentioned above, is run by BTPA – relies on ‘proxies’ (i.e. units of data) which help determine the share that each of the operators need to pay towards the running of the Force. Some of these proxies are already broken down by regions (Crime & Station Usage, for example) but some are only available in nation-wide figures (Train/Timetable/Kilometres and Network Access Charges). These two national proxies in particular (which are obtained from the Office of Rail and Road (ORR) and from Network Rail respectively) would need to be split at the source.
7. The existing cost-allocation model is explicitly defined in the contracts – known as the Police Service Agreements (PSAs) – between BTPA and individual train operating companies, and Network Rail. Redrawing the cost-calculation formula might impact on the existing contractual provisions of the twenty-eight or so PSAs. The process of consulting on changes, and rolling out the new PSAs across the rail industry could conceivably take in excess of three years, which is the notice period for termination featured in PSA agreements. The Commission’s principle of avoiding detriment might also be invoked if it becomes apparent that a break-up of the model results in greater costs to train operators.

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<sup>4</sup> This is set out in s.31 of the Railways and Transport Safety Act 2003.

<sup>5</sup> BBC News - 10 March 2015 - <http://www.bbc.co.uk/news/uk-scotland-31808646>