

The Welsh Government's Legislative Consent Memorandum on the Passenger Railway Services (Public Ownership) Bill

October 2024



1. Background

1. The Passenger Railway Services (Public Ownership) Bill¹ (the Bill) was introduced into the House of Commons by the UK Government and had its First Reading on 18 July 2024. It is sponsored by the Department for Transport.

2. The Explanatory Notes to the Bill as introduced state that it is:

“a short Bill amending specific provisions in the Railways Act 1993 to remove the presumption in favour of private sector operation of franchised passenger services to facilitate Government’s commitment to bring such train operations back into public ownership when current franchise contracts end.”²

3. The long title to the Bill states that it is a Bill to:

“...make provision for passenger railway services to be provided by public sector companies instead of by means of franchises.”

4. The Bill had its third reading in the House of Commons and Committee of the whole House on 3 September 2024. No changes were made to the Bill during its passage. The Bill had its First Reading in the House of Lords on 4 September 2024 and received its Second Reading on 7 October. At the time this report was agreed, Committee Stage in the House of Lords was scheduled for 21 October 2024.

The Welsh Government's Legislative Consent Memorandum

5. Standing Order 29.1 provides that the Welsh Ministers must lay a legislative consent memorandum where a UK Bill makes provision in relation to Wales that has regard to devolved matters.³

6. On 1 August 2024, Ken Skates MS, the then Cabinet Secretary for Economy, Transport and North Wales, and now the Cabinet Secretary for Transport and

¹ [Passenger Railway Services \(Public Ownership\) Bill, as introduced](#)

² [Explanatory Notes](#) to the Passenger Railway Services (Public Ownership) Bill, as introduced, paragraph 1

³ On 18 September 2024, the Business Committee published a report on amending Standing Order 29.1. The proposed changes were agreed in Plenary on Wednesday 25 September 2024 and clarify what kind of provisions in a UK Bill require a legislative consent memorandum. See Business Committee, [Amending Standing Orders: Standing Order 29.1 \(Consent in relation to UK Parliament Bills\)](#), September 2024. The change did not impact on our consideration of the Memorandum.

North Wales (the Cabinet Secretary), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁴

7. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Climate Change, Environment and Infrastructure Committee should report on the Memorandum by 1 November 2024.⁵

Provisions for the which the Senedd's consent is required

8. The Cabinet Secretary's assessment is that consent is required for the following provisions⁶:

- Clause 1 - Prohibition on franchise extensions and new franchises
- Clause 2 - Future provision of services
- Clause 3 - Consequential provision
- Clause 4 - Extent, commencement and short title
- Schedule - Consequential amendments

9. The Memorandum notes that these provisions in the Bill:

- amend specific provisions in the *Railways Act 1993* (the 1993 Act) to remove the presumption in favour of private sector operation of franchised passenger services to facilitate the UK Government's commitment to bring such train operations back into public ownership when current franchise contracts end;
- enable the Secretary of State, the Scottish Ministers and/or the Welsh Ministers, as the appropriate franchising authorities, to secure the provision of designated railway passenger services via contracts with public sector operators and to commence the transition to public sector operation as current contracts reach their end date or contractual break point;
- disapply the requirement under regulation 22 of the Public Service Obligations in Transport Regulations 2023/1369 (the 2023 Regulations)

⁴ Welsh Government, [Legislative Consent Memorandum - Passenger Railway Services \(Public Ownership\) Bill](#), 1 August 2024

⁵ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Passenger Railway Services \(Public Ownership\) Bill](#); September 2024

⁶ Memorandum, paragraphs 14 to 24

to give at least 12 months' notice before awarding such contracts to public sector companies;

- remove the power to award franchises to private sector operators via a competitive tendering process and the requirement to publish a statement on how that power will be exercised;
- enable the Secretary of State to make short further awards or extensions to existing incumbent private sector operators where satisfied that, at that time, it will not be reasonably practicable to provide or to secure the provision of the railway passenger services by awarding a contract to a public sector company.⁷

10. The UK Government's Explanatory Notes state that:

"Bringing the operation of passenger services back into public ownership is one element of the Government's broader plan for the railways, which would also create a unified and simplified governance structure that places passengers at the heart of the mission, objectives and incentives for the railway. This broader plan, which is beyond the scope of this Bill, would include establishing a new arm's length public body – Great British Railways – which would be a directing mind in charge of Britain's railway infrastructure and services.

*The Government proposes to bring forward further, more extensive primary legislation to address the wider issues later in the Parliamentary session. In the meantime, the purpose of this Bill is specifically to facilitate the transfer of train operations back into public ownership, in advance of that more extensive legislation."*⁸

11. The UK Government agrees that consent is required for clauses 1 to 4 and the Schedule.⁹

⁷ Memorandum, paragraph 5

⁸ Explanatory Notes, paragraphs 6 to 7

⁹ Memorandum, paragraph 25; Explanatory Notes, Annex A - Territorial extent and application in the United Kingdom

The Welsh Government's position

12. In the Memorandum, the Cabinet Secretary notes that, by virtue of *The Welsh Ministers (Transfer of Functions) (Railways) Order 2018*, certain functions of the Secretary of State for Transport under the 1993 Act were transferred to the Welsh Ministers, including responsibility to set the terms and conditions of the Wales & Borders franchise.¹⁰ He goes on to state:

“Railway services in the Wales & Borders franchise are currently being provided by Transport for Wales Rail (TfW Rail) a subsidiary of Transport for Wales (TfW), acting as a public sector Operator of Last Resort.

Once the Operator of Last Resort procedure ends, a public sector operator would not be able to bid for the Wales & Borders franchise. While the Scotland Act 2016 makes provision for a public sector operator bid for Scottish franchises, there is no equivalent for Wales.

Provisions within the Bill will allow for a public sector operator to continue to operate Wales & Borders services and remove the need for a contract award process.

This meets one of the Welsh Government's long-term ambitions. It will secure the position of TfW Rail as a public sector operator of services under the authority of Welsh Ministers. This will enable us to maximise the benefits of integrating rail with other forms of public transport, particularly buses, through the forthcoming Welsh Bus Bill.”¹¹

13. The Cabinet Secretary explains the reasons why a UK Bill is being used to make provisions for Wales:

““Railway services” is a reserved matter under paragraph 117 of Schedule 7A to the Government of Wales Act 2006. However, the Senedd does have competence in relation to devolved Welsh authority public procurement functions in accordance with paragraph 194 of that Act.

¹⁰ Memorandum, paragraph 7

¹¹ Memorandum, paragraphs 8 to 11

The Welsh Ministers (Transfer of Functions) (Railways) Order 2018 transferred executive powers under the 1993 Act to the Welsh Ministers. Those powers will be extended in a way that could not be achieved through a Senedd Act given the limits on legislative competence.

*It is therefore considered appropriate for provision in relation to Wales to be made via the Bill.*¹²

14. The Cabinet Secretary concludes:

"In my view it is appropriate to deal with these provisions in this UK Bill as, whilst the Bill has significant impacts for devolved issues, railway services are a reserved matter on which the Senedd could not legislate.

*The clauses in the Bill provide powers to Welsh Ministers which will provide continuity with the current provider of the Wales & Borders franchise, TfW Rail. They will also allow us to continue integrating rail with buses, through the forthcoming Welsh Bus Bill.*¹³

2. Committee consideration

15. We considered the Memorandum at our meeting on 16 September 2024.¹⁴ We agreed our report on 14 October 2024.¹⁵

Our view

16. We note the Cabinet Secretary's assessment that it is appropriate to deal with these provisions in this UK Bill as "railway services" is a reserved matter on which the Senedd could not legislate.

17. We also note the Cabinet Secretary's observation that the Senedd does have the legislative competence in respect of devolved Welsh authority public procurement functions.

¹² Memorandum, paragraphs 27 to 29

¹³ Memorandum, paragraphs 39 to 40

¹⁴ ~~Legislation, Justice and Constitution Committee~~, 16 September 2024

¹⁵ ~~Legislation, Justice and Constitution Committee~~, 14 October 2024

- 18.** We acknowledge that “railway services” is a reserved matter under the *Government of Wales Act 2006* but that the Welsh Government has certain executive powers under the 1993 Act, including powers to procure and manage the Wales and Borders Rail Franchise.
- 19.** We also acknowledge that the Senedd does not have the legislative competence to change the system within which these executive powers operate.
- 20.** We therefore agree with the Cabinet Secretary’s assessment that the Senedd could not legislate on the matters included in the Bill.
- 21.** We also agree that legislative consent is required for the Bill because of its impact on the executive powers of the Welsh Ministers, which therefore meets the test of Standing Order 29 that the Bill makes provision in relation to Wales that has regard to devolved matters.

Conclusion 1. We agree with the Cabinet Secretary that clauses 1 to 4 of the Bill (as introduced), and its Schedule are provisions which require the consent of the Senedd in accordance with Standing Order 29, in so far as those provisions made in relation to Wales have regard to devolved matters.

- 22.** We note that paragraph 6 of the LCM states that:

“The UK Government inquired whether the Welsh Ministers want these provisions to apply to their powers under the 1993 Act as well as those of the Secretary of State.”

- 23.** We welcome the collaborative approach between the Welsh and UK Governments implied in this paragraph and hope that it is replicated in circumstances where the UK Government is considering including provision on devolved matters in UK Bills (notwithstanding our wider concerns about using UK Bills to legislate in devolved areas).
- 24.** We also wish to make one further general point. In our view, there are benefits to the alignment of the Senedd’s legislative competence with the executive competence of the Welsh Ministers, not least in terms of coherence for law-making and ensuring that law applicable to Wales is accessible.
- 25.** In this regard we note the reference in the Explanatory Notes to the Bill to the prospect of “further, more extensive primary legislation” on railways.

Recommendation 1. Given the approach by the UK Government referred to in paragraph 6 of the legislative consent memorandum, the Cabinet Secretary

should state whether he used the opportunity provided to raise the prospect of using forthcoming primary legislation on railways to align the Senedd's legislative competence with the existing executive competence of the Welsh Ministers in this policy area.