

**Ken Skates AC/AM**  
**Ysgrifennydd y Cabinet dros yr Economi a'r Seilwaith**  
**Cabinet Secretary for Economy and Infrastructure**



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref

Assembly Members

20 July 2017

Dear Member

In my Oral Statement this week I set out how we are working with the Department of Transport to procure the Wales and Borders rail service under an agency agreement, pending the full transfer of franchising powers

Unfortunately I learnt yesterday that the Department for Transport will not be in a position to meet the timescales we have set out for our procurement programme. This is hugely disappointing, and has a number of potentially serious consequences.

I attach the letter which I have written to the Secretary of State for Transport which describes these issues in more detail.

I will update members in the next term on the full implications once the UK Government has responded and we have a clearer idea of the impact.

Yours sincerely

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**Cabinet Secretary for Economy and Infrastructure**

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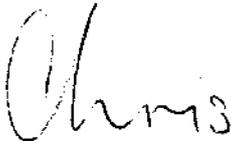
Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



Rt Hon Chris Grayling MP  
Secretary of State for Transport

20 July 2017

Dear 

My officials yesterday advised me that the Department for Transport is not in a position to support our intended tender issue date for the Wales and Borders rail service. Transport for Wales (TfW) will be ready to issue the tender to bidders on 18 August. Instead though, your officials' proposal is to slip the date until 26 September.

Such a delay has a number of substantial risks and consequences. I understand that this delay is largely caused by the UK Government's decision to hold a General Election earlier this year and the consequent impact on your officials' ability to take decisions and move the process forward.

Your department agreed in November 2014 that the transfer of powers for rail franchising should be complete by January 2017. This has not happened and as a result we are not able to proceed to tender without your agreement. It is clearly important for the people of Wales and for the suppliers who we are working with that we maintain our programme. However, in the absence of these powers, and the lack of the necessary agency agreement, we must reluctantly re-profile our activities to deal with this delay.

As well as the disquiet that this may cause amongst bidders, and the potential threat of their withdrawal, I would like to set out the other consequences of this delay, which when Christmas and other factors are now taken into consideration, will cause a material delay of over two months to our plans:

1. Potential loss of European Union ERDF funding. The programme for drawing down structural funds is already tight, and is contingent on the appointment of our Operator and Development Partner (ODP) to start design and mobilisation works for the South Wales Metro. I will consider starting this in parallel with the procurement by third parties, although recognising that, in part, it may result in abortive work. This action is likely to increase our expenditure by £1-2m, and I would welcome your proposals for compensating Welsh Government for this expenditure if it becomes abortive.

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2. Alternative re-procurement. Should the current procurement be challenged, the programme delay will remove the opportunity to run a new procurement based on a standard franchise without extending the existing contract. As well as huge inconvenience for passengers resulting from a lack of capacity enhancement, renewed rolling stock and new services, we estimate that the financial inefficiency of such an arrangement will cost us tens of millions of pounds if an extension is put in place for a sustained period. I would welcome your proposals for how you intend to compensate Welsh Government for this additional cost, if incurred.
3. Increased costs. The delay to the programme will result in additional costs being incurred by Transport for Wales, Welsh Government and the bidders as our teams and advisers will need to be paid to effectively stand still. We also run the risk of some of these resources migrating away from the procurement at a critical time. TfW will attempt to mitigate the worst of this, but I anticipate that this could add up to £1.5m to the process. I would welcome your proposals for how you intend to compensate Welsh Government for this additional expenditure.
4. Mobilisation. The programme delay will reduce the mobilisation period, which could result in the ODP not being ready to operate the service in October 2018 and take over the Core Valley Lines in 2019. More worrying still is the looming deadline for Persons with Reduced Mobility (PRM) compliance. All of our bidders have reinforced the importance of an early award decision to allow rolling stock to be ordered to allow them to comply with your January 2020 deadline. Whilst Welsh Ministers fully support the ambition of the regulations, until franchising powers are fully transferred PRM compliance remains an issue for you. I would therefore welcome your proposals, as a matter of urgency, on how you intend to address this issue.

It is my intention to instruct Transport for Wales to issue the tender documents to the bidders in final draft form on 18 August, following the incorporation of comments from your officials. From that time on the documents will be frozen. There will be no opportunity for any party to influence their content from that point until your department's delayed tender issue date. This is partly to allow the bidders to get on with the task of preparing their tenders, and partly to try to mitigate some of the costs that will be incurred by your department's delay.

I understand that your officials are attempting to resolve a franchise related financial matter in parallel with the tender approval process. This is an important issue and needs to be properly addressed. However, given the criticality of meeting our programme, I am prepared to de-couple these issues (because they are not co-dependent) and continue to discuss this matter and seek to address the financial matter in the period before contract award if we are unable to agree it before 26 September. In view of the position your department has put us in, I hope that you will act reasonably on this request.

Any further slippage to the tender issue date will significantly magnify the above risks, and will be completely unacceptable. I therefore request your assurance that your officials will be instructed and empowered to ensure that the date of 26<sup>th</sup> September is achieved in collaboration with my officials and Transport for Wales.

I am copying this letter to the Secretary of State for Wales, the Chair of the National Assembly for Wales' Economy, Infrastructure and Skills Committee and to members of the National Assembly for Wales.

Yours ever,  
Ken

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