

## LEGISLATIVE CONSENT MEMORANDUM

### PASSENGER RAILWAY SERVICES (PUBLIC OWNERSHIP) BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The *Passenger Railway Services (Public Ownership) Bill* (“the Bill”) was introduced in the House of Commons on 18 July 2024. The Bill can be found at: [Passenger Railway Services \(Public Ownership\) Bill](#)

#### Policy Objective

3. The UK Government’s stated policy objectives are to remove the presumption in favour of private sector operation of franchised passenger services in the Railways Act 1993 (‘the 1993 Act’). This will facilitate the UK Government’s commitment to bring such train operations back into public ownership when current franchise contracts end.

#### Summary of the Bill

4. The Bill is sponsored by the Department for Transport.
5. The Bill makes provision for:
  - i. Amending specific provisions in the 1993 Act to remove the presumption in favour of private sector operation of franchised passenger services to facilitate UK Government’s commitment to bring such train operations back into public ownership when current franchise contracts end.
  - ii. Enabling 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.
  - iii. Disapplying the requirement under regulation 22 of the Public Service Obligations in Transport Regulations 2023/1369 (“the 2023 Regulations”) to give at least 12 months’ notice before awarding such contracts to public sector companies.
  - iv. Removing 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.

- v. 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.
6. 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.
7. The Welsh Ministers (Transfer of Functions) (Railways) Order 2018 transferred to the Welsh Ministers certain functions of the Secretary of State for Transport under the 1993 Act, including responsibility to set the terms and conditions of the Wales & Borders franchise.
8. 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.
9. 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.
10. 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.
11. 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.
12. Private sector operators including Great Western Railways, Avanti, and CrossCountry provide cross-border services under UK Government contracts. Welsh Ministers have no role in these services, which will be affected by the Bill.
13. Given the importance of these services for the Welsh economy and connectivity we will also work with UK Government to ensure the forthcoming Rail Reform Bill provides a role for Welsh Ministers.

#### **Provisions in the Bill for which consent is required**

14. Consent is required for the following provisions in so far as they make provision with regard to devolved matters, namely the modification of devolved functions, and modify devolved Welsh authority public

procurement functions which the Senedd has legislative competence in relation to.

#### Clause 1: Prohibition on franchise extensions and new franchises

15. Clause 1 replaces sections 25 to 26ZA of the 1993 Act with new section 25A which prohibits the Welsh Ministers and the Scottish Ministers from extending existing franchise agreements or entering into new franchise agreements.
16. Clause 1 also applies to the Secretary of State, subject to the proposed new power inserted by clause 2 (temporary continuation of existing franchises).

#### Clause 2: Future provision of services

17. The Welsh Ministers have a duty to provide or secure the provision of railway passenger services where a franchise agreement in respect of the services is terminated or otherwise comes to an end.
18. Clause 2 provides that the Welsh Ministers may fulfil that duty only by making a direct award of a public service contract to a public sector company.
19. Powers are provided to the Secretary of State in relation to private sector operated franchises and managing them entering public sector operation.
20. That includes power to enter into new, or extend existing, franchise agreements where the Secretary of State is the franchising authority and is satisfied that franchising services cannot be provided. This will affect cross-border UK Government franchises outside of the Welsh Ministers' authority.
21. Certain requirements of the procurement regime contained in the 2023 Regulations are disapplied from direct awards and arrangements made in relation to private sector operated franchises.

#### Clause 3

22. Provides consequential power for the Secretary of State to make regulations under the Bill.

#### Clause 4

23. Sets the territorial extent of the Bill to England and Wales and Scotland.

#### Schedule

24. The concept of franchising is referenced throughout the 1993 Act. As the Bill implements a shift away from private sector franchising, towards operation of designated railway passenger services by public sector

companies, the schedule includes amendments to the 1993 Act consequential on the Bill.

### **UK Government view on the need for consent**

25. UK Government has sought legislative consent for:

- i. Clause 1
- ii. Clause 2
- iii. Clause 3
- iv. Clause 4
- v. Schedule

### **Reasons for making these provisions for Wales in the Passenger Railway Services (Public Ownership) Bill**

26. The main subject matter of the Bill is the provision of rail passenger services. The Bill also touches on procurement to the extent that it modifies the application of the 2023 Regulations.
27. "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.
28. 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.
29. It is therefore considered appropriate for provision in relation to Wales to be made via the Bill.
30. The Senedd will see no changes to its legislative competence.
31. The Welsh Ministers will have powers in line with our ambition to have a public sector railway operator in Wales long term.
32. The railway is a fundamental public service belonging to us all, and its place is in the public sector rather than in the hands of shareholders and private investors
33. We are already demonstrating the benefits of a publicly owned rail operator, with Transport for Wales focussed on delivering for people not profit.
34. Our priorities for rail reform in Wales have already been laid out to the new Secretary of State for Transport. We will work with them as we continue to improve services for rail passengers across Wales and the Borders.

35. This Bill does not achieve the wider goal of greater devolution with a fair funding settlement.

### **Financial implications**

36. The Bill will require Wales & Border services to be provided by a public sector company instead of via contract with a private sector operator.

37. Financial assistance is currently provided by the Welsh Ministers, and it is likely that an on-going public sector company would continue to require financial assistance. There is a possibility that the expenditure incurred will increase.

38. By retaining a public sector operator there will be no costly and time consuming procurement process for a private sector operator.

### **Conclusion**

39. 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.

40. 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.

41. Therefore, I recommend that the Senedd supports the proposals and gives its consent.

**Ken Skates MS**

**Cabinet Secretary for Economy, Transport and North Wales**

**1 August 2024**