

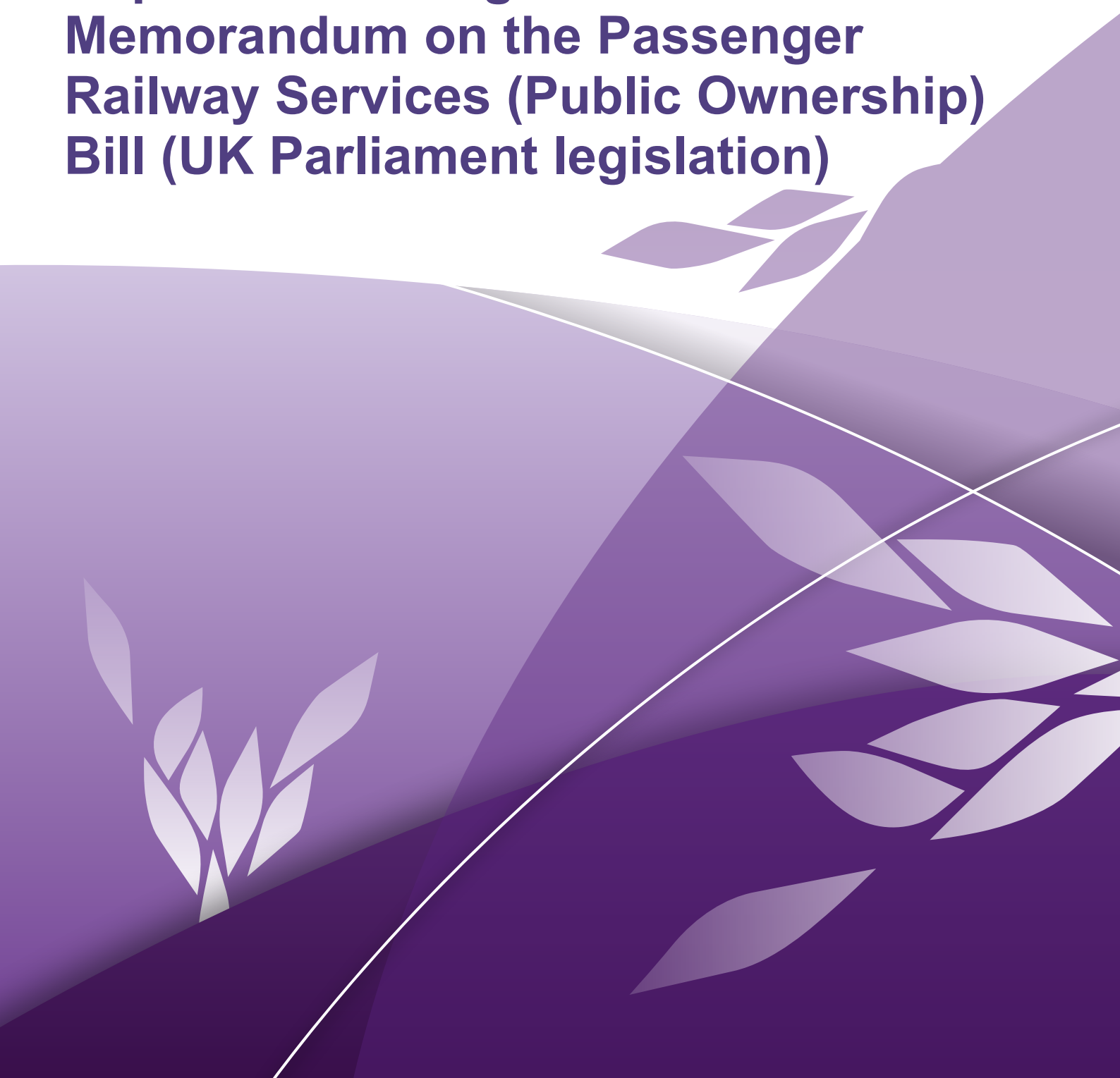


The Scottish Parliament
Pàrlamaid na h-Alba

Published 9 October 2024
SP Paper 657
12th Report, 2024 (Session 6)

Net Zero, Energy and Transport Committee

Report on the Legislative Consent Memorandum on the Passenger Railway Services (Public Ownership) Bill (UK Parliament legislation)



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:
<http://www.parliament.scot/abouttheparliament/91279.aspx>

For information on the Scottish Parliament contact Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

Membership changes	1
Introduction	2
Background	3
Net Zero, Energy and Transport Committee consideration	4
Conclusions and recommendations	6

Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Transport and the Cabinet Secretary for Net Zero and Energy, with the exception of matters relating to just transition; and on matters relating to land reform, natural resources and peatland, Scottish Land Commission, Crown Estate Scotland and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands.



netzero.committee@parliament.scot



0131 348 6039

Committee Membership



Convener
Edward Mountain
Scottish Conservative
and Unionist Party



Deputy Convener
Michael Matheson
Scottish National Party



Bob Doris
Scottish National Party



Jackie Dunbar
Scottish National Party



Monica Lennon
Scottish Labour



Douglas Lumsden
Scottish Conservative
and Unionist Party



Mark Ruskell
Scottish Green Party

Membership changes

1. Ben Macpherson MSP resigned from the Committee, and as Deputy Convener, on 10 September. He was replaced by Michael Matheson MSP on the Committee on 11 September 2024. The Committee thanks Ben Macpherson for his contribution to consideration of this LCM.

Introduction

2. The [Passenger Railway Services \(Public Ownership\) Bill](#) (the Bill) was introduced in the House of Commons on 18 July 2024 and will bring rail passenger services into public ownership on termination of any existing franchise contracts.ⁱ
3. ScotRail and Caledonian Sleeper services (the two passenger rail services for which the Scottish Ministers are responsible) are already in public ownership through existing “operator of last resort” powers. However, the Bill will put the nationalisation of passenger rail services on a firmer legislative footing. It will also prevent any future award of contracts to private operators, in effect legally securing the two Scottish passenger rail services in public ownership for the foreseeable future.
4. The Bill comprises four clauses and a schedule. The LCM set out the Scottish Government’s position that all of these require the consent of the Scottish Parliament as they alter the executive competence of the Scottish Ministers. The LCM also set out the UK Government’s view that clause 2(3) (which gives the UK Government power to temporarily continue existing franchises) did not require consent. However, a subsequent [letter from the Cabinet Secretary for Transport](#) updated the Committee that the UK Government now considers that the whole of the Bill engages the legislative consent process.
5. The [Legislative Consent Memorandum](#) (LCM) on the Bill was lodged by the Scottish Government on 1 August 2024. This was subsequently referred to the Net Zero, Energy and Transport Committee as lead committee for considering the LCM. The Committee must therefore consider the LCM and report to the Parliament on it. In doing so the Committee should consider whether it is appropriate that consent should be given to the UK Parliament legislating in this area. It should also highlight any policy issues that it considers the Parliament should be aware of before reaching a view on consent.
6. The Scottish Government proposes consent to the whole Bill. The LCM includes the following draft motion on legislative consent-
 - ” That the Parliament agrees that all provisions of the Passenger Railway Services (Public Ownership) Bill, introduced in the House of Commons on 18 July 2024, so far as these matters alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.

ⁱ The position in respect of open access operators is different, with the UK Government having stated: "We have been clear that there will remain a role for open access services, with existing operators continuing to operate on the network alongside publicly owned services, where they add value and capacity to the network." [HC deb 29 July 2024, vol 752, col 1137](#)

Background

7. The Bill is part of a larger review of the British passenger railway industry, which has been underway for several years.
8. The previous UK Government set out plans for the fundamental reform of the British rail industry in [Great British Railways: The Williams-Shapps Plan for Rail](#) which was published in May 2021. This proposed the replacement of the franchising system with a series of management contracts, where the holders would earn a set level of return if services met defined quality standards.
9. The previous UK Government published a draft Rail Reform Bill on 20 February 2024, setting out how it intended to implement the changes outlined in the Williams-Shapps plan.
10. The Labour Party's 2024 Manifesto for the UK parliamentary elections included commitments on the reorganisation of the British passenger rail industry:
 - ” “We will put passengers at the heart of the service by reforming the railways and bringing them into public ownership. We will do this as contracts with existing operators expire or are broken through a failure to deliver, without costing taxpayers a penny in compensation. Great British Railways will deliver a unified system that focuses on reliable, affordable, high-quality, and efficient services; along with ensuring safety and accessibility. It will be responsible for investment, day-to-day operational delivery and innovations and improvements for passengers, working with publicly-owned rail operators in Wales and Scotland”
11. The 2024 King's Speech included a commitment from the new Government to introduce a Railways Bill, which would establish Great British Railways (an organisation that would act as a “guiding mind” for the industry), formally end the franchising system, establish a Passenger Standards Authority, simplify ticketing arrangements, and support freight and open-access passenger service operators.
12. The King's Speech also included a commitment to introduce a separate Bill to bring all previously franchised passenger rail services back into public ownership. Each franchise would be brought into public ownership at the first break point in the contract, or earlier if contractual targets were missed. This means that no compensation would have to be paid to franchise holders for breach of contract. The UK Government expects all remaining franchises to have expired by October 2027.
13. In Scotland this will impact certain cross-border services but the Scottish Ministers themselves do not have any franchise agreements and ScotRail and Caledonian Sleeper services are already operated by companies owned by the Scottish Ministers. The Bill will therefore have no direct effect on current ScotRail or Caledonian Sleeper services. However, it will prohibit the Scottish Ministers from awarding a contract for the provision of passenger rail services to a private sector company in the future.

Net Zero, Energy and Transport Committee consideration

14. The NZET Committee took evidence from Fiona Hyslop MSP, the Cabinet Secretary for Transport on the LCM on [3 September](#).
15. As well as the specific content of the LCM, this session also explored wider rail reform that is expected in the near future, both in Scotland and at a UK level. These are issues that the Committee will return to in future scrutiny. In relation to the LCM, the key issues the Committee sought to explore were:
 - The impact of the Bill on ScotRail and Caledonian sleeper services
 - The removal of the ability of the Scottish Ministers to award contracts to private operators

Impact on ScotRail and Caledonian Sleeper Services

16. The Committee explored with the Cabinet Secretary the impact that the Bill would have on ScotRail and Caledonian Sleeper services. The Committee asked how publicly owned cross-border railway services would interact with, or work alongside, those two services. The Cabinet Secretary reflected that "If there could be more stability in the system, that would really help everybody".ⁱⁱ She explained that strike action in the rest of the UK has a knock-on effect that causes major disruption. The Cabinet Secretary did acknowledge that it was still unknown if public ownership would have this stabilising effect in the rest of the UK and stated: "I am not going to assume that public ownership will suddenly resolve everything and that everything will be okay".ⁱⁱⁱ She did however state that the experience in Scotland of public ownership has had this effect, stabilising relationships with trade unions. She was hopeful the same effect might be felt in the rest of the UK, improving services for everyone.

Removal of ability to award contracts for passenger rail services to private sector companies

17. Those passenger railway services for which the Scottish Ministers have responsibility are already in public ownership. However, the Bill would remove the ability of the Scottish Ministers to award those contracts to a private operator in future. The Committee asked the Cabinet Secretary if the Scottish Government had any concerns about the removal of this ability.
18. The Cabinet Secretary made clear that the Scottish Government's position is that public ownership is "the right way forward", which is why the Scottish Government took the steps they did in relation to Scottish services.^{iv} She highlighted that any future UK Government could reverse this position and compared this policy shift with the previous one that brought railways into private ownership. As this is an

ii Net Zero, Energy and Transport Committee, [Official Report](#), 3 September 2024, Col 8

iii Net Zero, Energy and Transport Committee, [Official Report](#), 3 September 2024, Col 8

area of reserved policy, the Cabinet Secretary considered that a matter for a future UK Government and stated: "Different Governments can make decisions at different times about what their policy priority is".^v

19. There was an exchange on the extent to which a future Scottish administration would be able to award a passenger service contract to a private operator. In follow-up correspondence, the Cabinet Secretary stated that-

” the Bill will amend the Railways Act 1993 (the 1993 Act) to replace the presumption that rail passenger services designated under section 23(1) ought to be delivered by franchise agreements with a presumption that they ought to be provided according to franchising authorities’ duty at section 30(1). The Bill will amend section 30 so that franchising authorities may secure the provision of services in furtherance of their duty at section 30(1) only by making a direct award of a public service contract to a public sector company. On that basis, the Bill does not contain any provisions, or make any amendments to the 1993 Act, which would enable the Scottish Ministers to award contracts for the provision of services to private operators."

20. Graham Simpson MSP attended the Committee meeting and also asked questions on this issue. He highlighted that this Bill tells devolved Governments what they have to do. He discussed the situation where a future Scottish Government may disagree with this model of ownership and wish to take a different approach but are prevented. He asked: "As someone who has spoken passionately about devolution, surely you must think that that tramples all over devolution, does it not?"^{vi}

21. The Cabinet Secretary responded-

” We either deal with where we are now or we determine that we want to try to cause a fight about the principle of decision making on the issue. It is the case that rail legislation remains reserved. That is why I am referring to the main piece of UK legislation that is coming and our opportunity to have full devolution through it. While UK rail legislation remains reserved, I have the opportunity to ensure that what is a temporary system of public ownership becomes a permanent system of public ownership. I am going to take it; I think that it is important that we take that opportunity."^{vii}

iv Net Zero, Energy and Transport Committee, [Official Report](#), 3 September 2024, Col 6

v Net Zero, Energy and Transport Committee, [Official Report](#), 3 September 2024, Col 4

vi Net Zero, Energy and Transport Committee, [Official Report](#), 3 September 2024, Col 16

vii Net Zero, Energy and Transport Committee, [Official Report](#), 3 September 2024, Col 16

Conclusions and recommendations

22. **The Committee notes that the Bill will have no direct effect on ScotRail or Caledonian Sleeper services due to passenger rail services in Scotland already being provided by publicly owned companies. However, it will remove the ability of the Scottish Ministers to make awards for passenger railway services to private operators. We note that the Scottish Ministers are content with this limitation on their executive competence and that the current Scottish Government has made clear their commitment to retaining public ownership.**
23. **Different political parties represented in Westminster and in this Parliament, and different individuals within those parties, may have different views on the merits of the state ownership of all passenger railway services for the foreseeable future. Given the limited practical impact of this Bill in Scotland, and the policy being reserved to the UK Parliament, the Committee agrees that any debate on the principles underlying the Bill is best conducted by the UK Parliament. We have no particular Scottish impacts to highlight.**
24. **The Committee recommends by majority^{viii} that the Scottish Parliament give its consent to the UK Parliament legislating in this area, as proposed in the Scottish Government's draft motion.**

^{viii} Edward Mountain MSP and Douglas Lumsden MSP in the minority.

