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Dean Lockhart MSP
Convener of Net Zero, Energy and Transport
Committee
The Scottish Parliament
Edinburgh
EH99 1SP

8 April 2022

Dear Convener,

Update on bringing ScotRail Services within the public sector under Scottish Government control

Further to my recent appearance at the NZET Committee Evidence Session (15 March 2022) to discuss the Operator of Last Resort (OLR) arrangements, in advance of ScotRail coming under Scottish Government control on 1 April 2022, and the subsequent follow up from your senior assistant clerk requesting further information on a number of points discussed at the Committee, I can provide the following updates.

In relation to the matter of which options, other than OLR, had been considered by the Scottish Government and the advice sought and/or provided to the Scottish Government on those options, although the UK Government had begun its rail reform agenda, the decision about who and what would replace the current ScotRail franchise agreement had to be taken within the context of the UK statutory framework for rail (the Railways Act 1993) and relevant retained EU law.

Equally, Scottish Ministers had made plain that the UK rail franchising arrangements were fundamentally flawed and the powers to allow structural reform should be devolved to the Scottish Parliament.

As outlined by the Director of Rail at Committee, Ministers undertook a staged process which led to an OLR being appointed, in line with legislation. For further information on this process, please see Annex A.

On the matter of mobilisation costs, as was confirmed by the Director of Rail at the Committee, costs since the decision, in this financial year to date stand at £3.6m. The process has entailed more work than originally anticipated, but this has identified opportunities for material savings that are substantially larger than the mobilisation costs. £3.6m remains significantly lower than

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the typical costs of £10m or more required by the public sector to run a franchise procurement competition, not to mention the bid costs that each bidder must incur.

Once the OLR mobilisation has been completed, a final reconciliation of all costs will be undertaken, and I will thereafter provide a further update to the Committee.

Transport Scotland's Annual Report and Accounts are laid before parliament and subsequently published on the Transport Scotland website each year within the required deadline of nine months from the year end. However, the information required in these accounts does not include this degree of detail.

In respect of the Fare Fares Review, as I have previously intimated, the Fair Fares Review is currently at the planning stage. In parallel to our immediate priorities to support the recently published Strategic Framework and Covid Recovery, securing a safe and confident return to public transport, I have asked my officials to provide me with advice on accelerating elements of the Review and will update the Committee in due course.

On the matter of staff representation on the Board of Scottish Rail Holdings Ltd., I can confirm, as per my update to the Committee, that this process is underway. As this appointment has not yet concluded I am unable to provide details of the named individual put forward collectively by the unions. I can confirm, however, that the position on the Board will be as a Non-Executive Director.

I am keen to take the unions and all employees with us as we move towards public ownership of our railway and my discussions to date with the rail unions have been positive. Confirmation of the position for the unions on the Board of Scottish Rail Holdings Ltd. is further testimony to the valued contribution our unions have to play in ensuring our railway best serves the needs of the passengers.

I hope that the updates provided above are helpful to the Committee and I will revert back with further updates, in due course, as outlined above.

JENNY GILRUTH

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Date and Topic	Description
UK Rail (“Williams”) Review February 2019	UK Rail Review process took place with recognition from its Chair, Keith Williams that ‘ <i>franchising cannot continue in the way that it is today</i> ’.
December 2019 Decision to end Franchise	<p>The franchise agreement required Scottish Ministers and Abellio to revisit the level of government subsidy provided for the remaining five years of the contract (as at that time) and to determine whether additional subsidy should be paid.</p> <p>After analysis and consideration of the information provided by Abellio ScotRail, Ministers decided that the significant increase in Government subsidy proposed would not secure delivery of commensurate benefits to passengers, communities and the economy.</p> <p>Ministers therefore served a No Rebasing Notice on Abellio ScotRail. As a result of this decision, the franchise would come to an end on 31 March 2022.</p>
Pre March 2021 Decision to rule out Franchise Competition...	<p>Ministers decided that it would not be appropriate to award a franchise agreement to any party, either through a competition which would likely be inefficient at that time, or a direct award. In respect of franchising, this reflected the following uncertainties in the rail market at the time:</p> <ul style="list-style-type: none"> • finances were increasingly unsustainable (as evidenced by Scottish Ministers’ own rebasing decision and a number of high profile franchise failures, such as Virgin Trains East Coast). The Train Operating Companies had little appetite to enter a competition, given the costs in time and finances in constructing a bid which may ultimately prove unsuccessful - reducing the number of potential bids. (NB: A public sector bidder would also incur bid costs.) • expectation of a changed legislative backdrop and clear signals from the UK Government that rail franchising had failed and would need to be replaced – though what that would entail was unknown, again increasing the reluctance to bid • the beginnings of COVID-19 pandemic and its impact on revenues.
....and a Direct Award and move to the “Operator of Last Resort”	<p>Scottish Ministers also ruled out a Direct Award. There would be an understandable reluctance on the part of any existing TOC to take on the financial risk associated with the ScotRail franchise at a time of significant uncertainty , without a likely requirement for a significant risk premium.</p> <p>Scottish Ministers presented a strong case to the UK Government in respect of rail reform, seeking more devolved powers for the Scottish Parliament to improve accountability and alignment. This was in line with the expectation that UK Government via the Rail Review would introduce meaningful reform. It also did not seem appropriate therefore to embark upon a Direct Award at a time when the outcome of the Rail Review was unknown. In the event, the rail reform process was significantly delayed.</p>

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