

Legislative Consent Memorandum

Railways Bill

Background

1. This memorandum has been lodged by Fiona Hyslop MSP, Cabinet Secretary for Transport, in accordance with Rule 9B.3.1(a) of the Parliament's Standing Orders.
2. The Railways Bill ("the Bill") was introduced by the UK Government in the House of Commons on Wednesday 5 November 2025. The Bill is available on the UK Parliament website via this link: [Railways Bill - Parliamentary Bills | UK Parliament](#).

Content of the Bill

3. The Bill makes provision for the establishment of a new rail body to be known as Great British Railways ("GBR") in line with the UK Government's manifesto commitment. GBR will act as the new publicly owned "directing mind" and will be responsible for rail infrastructure and rail passenger services for which the Secretary of State for Transport is currently responsible. The Bill introduces a new process for funding GBR and a new regime governing allocation of and charging for access to rail infrastructure managed by GBR. The Bill also establishes a new passenger watchdog, formed from the existing "Transport Focus" (Transport Focus is a trading name, the statutory title is the Passengers' Council and this will be retained in the Bill).
4. The Bill is comprised of 4 Parts and 3 schedules:
 - Part 1 (The new regime for the railways) and Schedules 1 and 2 include provision:
 - Establishing GBR and setting out a range of statutory functions it will be required to exercise, including: managing, operating, maintaining, renewing and improving the rail network; providing access to the network; operating passenger services for which it is responsible; selling tickets for passenger services; providing services to facilitate the provision of railway services; and carrying out research and publishing advice;
 - Giving the Scottish Ministers the power to make arrangements in terms of which GBR, a subsidiary of GBR or a company jointly owned by GBR and the Scottish Ministers will exercise the Scottish Ministers' functions in relation to railways or railway services on their behalf. A similar power is given to the Welsh Ministers;
 - Giving the Secretary of State and the Scottish Ministers power to issue directions and guidance to GBR in relation to the exercise of its statutory functions;

- Placing a duty on GBR, the Secretary of State, the Scottish Ministers, the Welsh Ministers and the rail regulator, the Office of Rail and Road, to take account of various matters in exercising their relevant rail functions;
- Giving the Secretary of State the power to issue a licence to GBR;
- Establishing a new process for funding GBR; and
- Obliging the Scottish Ministers and the Secretary of State to enter into a Memorandum of Understanding setting out how they will work together in the exercise of their functions. A similar duty is imposed on the Secretary of State and the Welsh Ministers.
- Part 2 (Passenger and station services) includes provision:
 - Requiring the Secretary of State to designate the railway passenger services for which GBR should be responsible;
 - Requiring the Scottish Ministers to designate Scotland-only and particular cross-border services for which they are to be responsible;
 - Requiring the Welsh Ministers to designate Welsh services for which they are to be responsible;
 - Setting out the responsibilities of GBR, the Secretary of State, the Scottish Ministers and the Welsh Ministers in relation to designated services;
 - Giving the Scottish Ministers powers to provide passenger services they designate themselves or to secure the provision of those services by direct award of a public service obligation contract to GBR or a public sector company owned by the Scottish Ministers;
 - Giving the Secretary of State, the Scottish Ministers and the Welsh Ministers powers in relation to fares for the rail passenger services they designate; and
 - Establishing a new passenger watchdog, formed from the existing “Transport Focus” (Transport Focus is a trading name, the statutory title is ‘the Passengers’ Council’ and this will be retained under the Bill).
- Part 3 (Access to infrastructure and services) includes provision:
 - Establishing a new regime governing allocation of and charging for access to infrastructure for which GBR is responsible;
 - Providing rights of appeal on access matters to the Office of Rail and Road; and
 - Giving the Office of Rail and Road certain monitoring functions in relation to the exercise by GBR of its statutory functions.
- Part 4 (General) and schedule 3 make general provision in areas such as regulation making procedures, consequential amendments, interpretation, commencement, etc.

Provisions which require the consent of the Scottish Parliament

5. The Bill as a whole extends to Scotland. The UK Government's view is that the Bill relates to reserved matters, principally the provision and regulation of railway services (Head E2 of schedule 5 of the Scotland Act 1998). The UK Government does however accept that the legislative consent process is engaged in respect of clauses 4, 7-10, 12, 18, 19, 22, 23, 26, 29-31, 33-35, 78, 81 and schedule 2 (although it has not confirmed which paragraphs of schedule 2) to the extent that these provisions alter the executive competence of the Scottish Ministers.

6. The Scottish Government agrees that legislative consent is required as regards all the provisions identified by the UK Government. In addition, the Scottish Government considers that legislative consent is required in respect of clauses 25, 28, 32, 39, 43, 48, 66, 75, 80, 87, 90, paragraphs 1,2, 8-14 and 16 of schedule 2 and paragraphs 4, 8, 9, 12-18, 22, 25, 26, 33 and 53 of schedule 3. The reasons for the Scottish Government's position are set out below.

Part 1, Chapter 1, clause 4 (Exercise of functions of Scottish and Welsh Ministers)

7. This provision gives the Scottish Ministers the power to make arrangements for any of their functions relating to railways or railway services to be exercised on their behalf by GBR, a subsidiary of GBR or a company jointly owned by GBR and the Scottish Ministers. Insofar as this provision confers a new function on Ministers, it alters the executive competence of the Scottish Ministers.

Part 1, Chapter 1, clause 7 (Directions by the Secretary of State)

8. This provision gives the Secretary of State a power to direct GBR as to the exercise of its statutory functions. The Secretary of State must obtain the consent of the Scottish Ministers before exercising powers under this section, other than powers relating to access functions, in a manner that directly affects the operation of a rail passenger service provided by GBR on behalf of the Scottish Ministers. Insofar as this provision confers a new function on the Scottish Ministers, it alters the executive competence of the Scottish Ministers.

Part 1, Chapter 1, clause 8 (Directions by the Scottish Ministers)

9. This provision gives the Scottish Ministers a power to direct GBR as to the exercise of its statutory functions in Scotland so far as relating to Scottish railway activities. It also obliges the Scottish Ministers to consult with the Secretary of State before giving such a direction and to publish any direction given. The Secretary of State is given the power to revoke such directions in certain circumstances but is obliged before doing so to consult with the Scottish Ministers. Insofar as this provision confers a number of new functions and duties on the Scottish Ministers, it alters the executive competence of the Scottish Ministers.

Part 1, Chapter 1, clause 9 (Guidance by the Secretary of State)

10. This provision gives the Secretary of State a power to give guidance to GBR as to the exercise of its statutory functions. The Secretary of State must obtain the consent of the Scottish Ministers before exercising powers under this section, other than powers relating to access functions, in a manner that directly affects the operation of a rail passenger service provided by GBR on behalf of the Scottish Ministers. Insofar as this provision confers a new function on the Scottish Ministers, it alters the executive competence of the Scottish Ministers.

Part 1, Chapter 1, clause 10 (Guidance by the Scottish Ministers)

11. This provision gives the Scottish Ministers a power to issue guidance to GBR in relation to the exercise of its statutory functions in Scotland insofar as they relate to Scottish railway services. Scottish Ministers are obliged to publish any guidance given. Insofar as it confers new functions on the Scottish Ministers, this provision alters the executive competence of the Scottish Ministers.

Part 1, Chapter 1, clause 12 and schedule 2 (Funding)

12. Clause 12 introduces schedule 2. Schedule 2 contains provisions that confer new functions and duties on the Scottish Ministers (described further below) and as such, clause 12 of the Bill also confers such functions and alters the executive competence of the Scottish Ministers.

13. Schedule 2, paragraph 1 enables the Office of Rail and Road (ORR) to set and manage the timetable for the funding of GBR by the Secretary of State. The ORR will set the timetable within which the Secretary of State will provide GBR and the ORR with a statement of her objectives for the funding period and notification of the funding to be made available. Before issuing the timetable, the ORR are obliged to consult with Secretary of State, the Scottish Ministers, the Welsh Ministers, and GBR. The timetable for the production of the Secretary of State's statement of objectives and funding will directly impact on the timetable for the production of the Scottish Ministers' statement of objectives and funding (discussed further below). As such, this consultation requirement will have a direct impact on the Scottish Ministers' functions in relation to the production of the statement and funding and therefore alters the Scottish Ministers' executive competence.

14. Schedule 2, paragraph 2 requires the Secretary of State to provide the Welsh Ministers, GBR and the ORR with a statement of objectives for the railways and railway services for the next five-year funding period. The Secretary of State will be required to consult the Scottish Ministers, the Welsh Ministers, the ORR, GBR, the Passengers' Council and each mayoral strategic authority when preparing this statement. The Scottish Ministers have a function of providing their own statement of objectives (discussed further below) and this will be informed by the Secretary of State's statement. This consultation requirement therefore directly impacts on the Scottish Ministers' functions of providing their own statement of objectives and therefore alters their executive competence.

15. Schedule 2, paragraph 8 gives the ORR the power to set the timetable within which the Scottish Ministers will be obliged to provide a statement of their objectives and funding available for the period and requires the ORR before doing so to consult with the Scottish Ministers. As such, this consultation requirement will have a direct impact on the Scottish Ministers' functions in relation to the production of the statement of objectives and funding information and therefore alters the Scottish Ministers' executive competence.
16. Schedule 2, paragraph 9 requires the Scottish Ministers to provide GBR and the ORR with a statement of objectives for the railways and railway services for the funding period. Insofar as this provision confers a new duty on the Scottish Ministers it alters the executive competence of the Scottish Ministers.
17. Schedule 2, paragraph 10 requires the Scottish Ministers to provide GBR and the ORR with an estimate of how much funding they will be able to provide GBR for the funding period. Insofar as this provision confers a new duty on the Scottish Ministers, it alters the executive competence of the Scottish Ministers.
18. Schedule 2, paragraph 11 provides that GBR must produce a business plan which sets out the activities it proposes to carry out during the funding period, the estimated costs of carrying on those activities and how GBR proposes to meet those costs. GBR must obtain the Scottish Ministers' approval of the business plan. Insofar as this provision confers a new function on the Scottish Ministers, it alters the executive competence of the Scottish Ministers.
19. Schedule 2, paragraph 12 states that GBR must keep the Scottish approved business plan up to date. It must consult the Passengers' Council and the ORR about any changes it proposes to make to the plan and the Scottish Ministers must approve any updates. Insofar as this provision confers a new function on the Scottish Ministers, it alters the executive competence of the Scottish Ministers.
20. Schedule 2, paragraph 13 gives the Scottish Ministers the power to provide GBR with financial assistance for the purpose of enabling it to carry out or assisting it with carrying out Scottish railway activities set out in an approved Scottish business plan. As this provision confers a new power on the Scottish Ministers, it alters the executive competence of the Scottish Ministers.
21. Schedule 2, paragraph 14 requires the Scottish Ministers to notify the ORR and GBR of how much funding under paragraph 13 the Scottish Ministers intend to grant for the purpose of enabling GBR to carry out, or assisting it with carrying out, Scottish railway activities set out in an approved Scottish business plan, by the date specified in the ORR's timetable. As this provision confers a new duty on the Scottish Ministers, it alters the executive competence of the Scottish Ministers.
22. Schedule 2, paragraph 16 provides definitions of terms including "approved Scottish business plan", "funding period", "railway activities" and "Scottish railway activities" which are required in order that the functions conferred by the other

paragraphs of schedule 2, referred to above, can be understood. As such, this paragraph also alters the executive competence of the Scottish Ministers.

Part 1, Chapter 2, clause 18 (General duties of Ministers, GBR and ORR)

23. This provision obliges the Scottish Ministers to exercise their rail functions:
- “(a) in the manner best calculated to promote the interests of users and potential users of railway passenger services including, in particular, the needs of disabled persons,
 - (b) in the manner best calculated to promote the use of the railway network in Great Britain for the carriage of goods,
 - (c) so as to promote high standards of railway service performance,
 - (d) so as to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance,
 - (e) in the manner that appears best calculated to be in the public interest, and
 - (f) taking into account the costs that will need to be met from public funds and the need to make efficient use of those funds,
- balancing the requirements of paragraphs (a) to (f) as seems to them appropriate in the circumstances.”

24. The same duty applies to the Secretary of State, the Welsh Ministers, GBR and the ORR (other than in relation to the ORR’s safety functions). Insofar as this provision places a new duty on the Scottish Ministers, it alters the Scottish Ministers’ executive competence.

Part 1, Chapter 2, clause 19 (Safety duty of Ministers and the ORR)

25. This provision obliges the Scottish Ministers in the exercise of their rail functions to take into account the need to protect all persons from dangers arising from the operation of railways. The provision places the Secretary of State, the Welsh Ministers and the ORR under the same duty. Insofar as this provision places a new duty on the Scottish Ministers, it alters the Scottish Ministers’ executive competence.

Part 1, Chapter 2, clause 22 (Duty of the ORR to have regard to Scottish Ministers’ guidance)

26. This provision gives the Scottish Ministers the power to issue guidance to the ORR as to the exercise of certain of its functions relating to railway services wholly or partly in Scotland and otherwise relating to railways in Scotland. Ministers must publish any guidance issued under this power. Insofar as this provision confers a new function on the Scottish Ministers, it alters their executive competence.

Part 1, Chapter 2, clause 23 (Memorandum of understanding: Secretary of State and Scottish Ministers)

27. This provision obliges the Secretary of State and Scottish Ministers to prepare and publish a memorandum of understanding (MoU) setting out how they will work together in the exercise of their respective rail functions. The MoU may, in particular, contain provision about: the role the Scottish Ministers are to have in relation to the governance and management of GBR; the objectives of the Scottish Ministers and Secretary of State in relation to the integration of passenger services and infrastructure in Scotland; and information sharing. Insofar as this provision confers a new function on the Scottish Ministers, it alters their executive competence.

Part 2, Chapter 1, clause 25 (Designation of services by the Secretary of State)

28. This provision imposes a duty on the Secretary of State to designate passenger services, the provision of which may be secured by the Secretary of State under clause 31 of the Bill. The Secretary of State must consult the Scottish Ministers before designating cross-border services or varying or revoking such a designation and is obliged to publish any designation, variation or revocation.

29. The UK Government's position is that a requirement to consult the Scottish Ministers is not considered a modification to an executive function.

30. The Scottish Government's position is that the Scottish Ministers have an interest in designations (variations and revocations) for cross-border services made by the Secretary of State as this may impact the designations Scottish Ministers may consider desirable or necessary to make for such services (using the powers conferred on them under clause 26 of the Bill). As such, the consultation requirement here directly affects the Scottish Ministers' executive competence in relation to designation of passenger services. This clause therefore alters the executive competence of the Scottish Ministers.

Part 2, Chapter 1, clause 26 (Designation of services by the Scottish Ministers)

31. This provision obliges the Scottish Ministers to designate Scotland-only passenger services which may be provided/secured by them under clause 31 of the Bill. Scottish Ministers are also given the power to designate a cross-border service they consider should be provided with a Scotland-only service. Scottish Ministers are obliged to consult the Secretary of State before designating such a cross-border service. Scottish Ministers can vary or revoke any designation made under this section and are obliged to publish any designation, variation or revocation. Insofar as these provisions confer new functions and duties on the Scottish Ministers, they alter the executive competence of the Scottish Ministers.

Part 2, Chapter 1, clause 28 (Exemption from designation: power of the Secretary of State)

32. This section gives the Secretary of State the power to make regulations exempting passenger services from designation under clause 25. The Secretary of State is obliged to consult the Scottish Ministers before making regulations specifying cross-border services that are to be exempted from designation.

33. The UK Government's position is that a requirement to consult the Scottish Ministers is not considered a modification of an executive function.

34. The Scottish Government's position is that cross-border services have an economic and connectivity impact in Scotland. If the Secretary of State was considering exempting a cross-border service from designation this may influence designations of such services by the Scottish Ministers under clause 26 of the Bill. As such, this consultation impacts on the Scottish Ministers' executive competence in relation to designation and provision of cross-border services and alters their executive competence.

Part 2, Chapter 1, clause 29 (Exemption from designation: power of the Scottish Ministers and Welsh Ministers)

35. This provision gives the Scottish Ministers the power to make regulations excepting Scotland-only services from designation under clause 26. Insofar as it confers a new function on the Scottish Ministers, it alters their executive competence.

Part 2, Chapter 1, clause 30 (Exemption from designation: supplementary)

36. This provision makes clear that regulations under clauses 28 and 29 may specify services provided by a description of persons or a particular person and passenger services generally or a particular service/part of a service. It also provides that such exemptions can be made subject to compliance with conditions specified in the regulations and that such exemptions can be time limited. Insofar as it makes provision about the scope and content of the power to make regulations in clause 29, this provision also confers a new function on the Scottish Ministers and therefore alters their executive competence.

Part 2, Chapter 1, clause 31 (Provision of railway passenger services)

37. This provision confers powers on the Scottish Ministers to provide passenger services designated under clause 26 themselves or to secure the provision of such passenger services through the direct award of a public service obligation contract to a public sector company. It also confers some ancillary powers in connection with this function e.g. to provide network, station and light maintenance depot services. Insofar

as it confers new functions on the Scottish Ministers, it alters their executive competence.

Part 2, Chapter 1, clause 32 (Contracts awarded under section 31: supplementary)

38. This provision relates to the scope and content of a contract awarded by the Scottish Ministers under clause 31. As such, this clause also confers a new function on the Scottish Ministers and alters their executive competence.

39. The UK Government's position is that this clause mirrors provision in section 29 of the Railways Act 1993 ("the 1993 Act") and there is no change to the Scottish Ministers' executive functions.

40. The Scottish Government's position is that the provision made in clause 32 is similar to, but different from, the provision made in section 29 of the 1993 Act. Section 29 of the 1993 Act makes provision about the contents of a franchise agreement awarded to a private sector company and clause 32 makes provision about the contents of a public service obligation contract awarded to a public sector company. Section 29 also contains a number of provisions not found in clause 32. As such, clause 32 confers a new function on the Scottish Ministers and alters their executive competence.

Part 2, Chapter 1, clause 33 (Fares)

41. This clause provides that the powers of direction in clauses 7 and 9 and powers to issue guidance in clauses 8 and 10 may be exercised to give directions or guidance as to the general level and structure of fares for travel on the services designated by the giver of the direction/guidance. It also provides that a contract awarded under clause 31 can make provision about the general level and structure of such fares. Insofar as it makes provision as to the scope of the powers in clauses 8 and 10 and the contents of a contract awarded under clause 31, it also confers new functions on the Scottish Ministers and alters their executive competence.

Part 2, Chapter 1, clause 34 (Discount fare schemes)

42. This provision obliges the Scottish Ministers to make arrangements in relation to passenger services they provide under clause 31 to enable persons who are young, elderly or disabled to travel at discounted fares on the services. It also makes provision about the provision that must be made in a contract awarded by the Scottish Ministers under clause 31 about discount schemes. As such, this clause confers new functions on the Scottish Ministers and alters their executive competence.

Part 2, Chapter 1, clause 35 (Interpretation of Chapter 1 and 2)

43. This provision defines "direct award", "public sector company" and "public service contract". The new functions conferred on the Scottish Ministers by clauses 31 and 32 rely on these definitions and as such, this clause also confers new functions on the Scottish Ministers and alters their executive competence.

Part 2, Chapter 2, clause 39 (Investigations)

44. This provision requires the Passengers' Council to investigate any matter relating to the provision of railway passenger services or station services in various circumstances, including where the matter is referred to the Council for investigation by the Secretary of State, the Scottish Ministers, the Welsh Ministers or the ORR. Insofar as this provision confers a new function on the Scottish Ministers, it alters their executive competence.

Part 2, Chapter 2, clause 43 (Reports)

45. This clause provides that where the Passengers' Council has investigated a matter under clause 39, it may prepare a report of its findings and may send a copy of the report to various bodies specified in clause 43(2), including the Scottish Ministers. In terms of clause 39(4), where the report was prepared following an investigation carried out as a result of a referral under clause 39(1)(c) by the Secretary of State, the Scottish Ministers or the Welsh Ministers ("the referring authority"), the Council must obtain the referring authority's consent before exercising its power to send a copy of the report to a person other than the referring authority or exercising its power in clause 39(3) to publish the report. Insofar as this clause confers a new function on the Scottish Ministers, it alters their executive competence.

Part 2, Chapter 2, clause 48 (Advice about railway passenger services and station services)

46. This clause provides that the Passengers' Council must consider any matter affecting the interests of the public in relation to railway passenger services or station services that is referred to it by the Scottish Ministers (or any other person specified in clause 48 (1)). Insofar as this provision confers a new function on the Scottish Ministers, it alters their executive competence.

Part 3, Chapter 1, clause 66 (Consultation)

47. This provision obliges GBR to consult with the Scottish Ministers (as well as the ORR, the Welsh Ministers and such other persons as it considers appropriate) before issuing, revising or replacing the Access and Use policy (which GBR is to prepare and publish in terms of clause 59 of the Bill). The Access and Use policy must set out GBR's policy about and procedures for access to and the use of GBR infrastructure for the operation of trains.

48. The UK Government's position is that a requirement for the Scottish Ministers to be consulted on something is not considered a modification of an executive function.

49. The Scottish Government position is that the Scottish Ministers are given functions in schedule 2 of the Bill to specify and fund infrastructure outputs in Scotland and in Part 2 of the Bill to provide and fund passenger services in Scotland.

50. This consultation requirement allows the Scottish Ministers to provide input on the development of the Access and Use Policy which will guide all decisions about access to and use of that infrastructure, including by the Scottish Ministers' own passenger service operators. This consultation requirement is especially important if the Scottish Ministers do not choose to have GBR provide passenger services on their behalf. As such, this consultation requirement has a direct impact on the Scottish Ministers' existing functions to specify and fund infrastructure in Scotland and designate and provide rail passenger services, and therefore alters their executive competence.

Part 3, Chapter 2, clause 75 (Miscellaneous functions of ORR)

51. This provision amends section 16A of the 1993 Act (provision, development and improvement of railway facilities) which gives the ORR a power to direct a facility owner to provide, develop or improve a railway facility on the application of "the appropriate facilities authority" (which is defined as the Scottish Ministers for facilities in Scotland and the Secretary of State for all other facilities) or any other person, with the consent of the facility owner. Clause 75 will insert a new paragraph into section 16A of the 1993 Act which provides that the ORR may not give such a direction to GBR. Section 16A confers functions on the Scottish Ministers and this amendment removes those functions as regards GBR. As such it, alters the executive competence of the Scottish Ministers.

52. The UK Government's position is that the Scottish Ministers' ability to apply to the ORR for a direction on infrastructure/facilities is now mirrored in the power for Scottish Ministers to give GBR directions under clause 8 of the Bill. Therefore, it is the UK Government's view that legislative consent is not required for this provision.

53. The Scottish Government's position is that the power in clause 8 of the Bill to give GBR directions is similar to, but different from, the power in section 16A of the 1993 Act to apply to the ORR to give a facility owner a direction. The power in clause 8 is subject to different conditions than the power in section 16A. As such, this provision removes an existing function of the Scottish Ministers and alters their executive competence.

Part 3, Chapter 2, clause 78 (Publication of information by Scottish Ministers)

54. This provision replaces section 73A of the 1993 Act which deals with the public register of information Scottish Ministers must keep and make available. Currently section 73A requires a number of different types of information, many related to the Scottish Ministers' franchising functions under the 1993 Act, to be kept in a public register. The new section 73A (inserted by this clause) requires the Scottish Ministers to publish only determinations under section 34 of the Railways Act 2005 (closures eligible to be treated as minor modifications) and information about the exercise of their powers under sections 55 and 57A of the Railways Act 1993 (Orders for securing compliance and Penalties). Insofar as this modifies the duty in section 73A of the 1993 Act, it alters their executive competence.

Part 3, Chapter 2, clause 80 (Duty to consult Scottish Ministers and Welsh Ministers)

55. This clause provides that GBR must consult Scottish Ministers before making a decision which relates to (i) a cross-border service designated by the Secretary of State or (ii) additions to part of the railway network operated by GBR which is situated in Scotland, if GBR considers that the decision will significantly affect the interests of Scotland's economy or of persons living in, working in or visiting Scotland.

56. The UK Government's position is that a requirement to consult the Scottish Ministers is not considered to modify their executive competence. This is based on the UK Government's interpretation of the Sewel Convention in this instance.

57. The Scottish Government's position is that the Bill gives the Scottish Ministers functions of designating services and providing/securing the provision of those services. The Bill also gives Ministers functions in relation to specifying and funding infrastructure outputs in Scotland. The consultation requirement here is triggered when the changes to cross-border services or infrastructure in Scotland will significantly affect the interests of Scotland's economy or of persons living in, working in, or visiting Scotland. As such, this consultation requirement will have a direct impact on the Scottish Ministers' existing functions and will alter their executive competence.

Part 3, Chapter 2, clause 81 (Duty to consult mayoral combined authorities)

58. This provision obliges the Scottish Ministers to consult a mayoral combined authority or mayoral combined county authority before making a decision in relation to passenger services designated by the Scottish Ministers under clause 26 if the service is provided in the authority's area and it appears to the Scottish Ministers that the decision will significantly affect the interests of the economy of the area or of persons living in, working in or visiting the area. Insofar as this clause confers a new function on the Scottish Ministers, it alters their executive competence.

Part 4, clause 87 and schedule 3 (Minor and Consequential amendments)

59. Clause 87 introduces schedule 3 which sets out numerous amendments to primary and secondary legislation. Numerous paragraphs in schedule 3 make amendments that alter the executive competence of the Scottish Ministers. As such, this provision also alters the executive competence of the Scottish Ministers.

60. Schedule 3, paragraph 4 repeals section 4 of the Railways Act 1993 (General duties of the Secretary of State and the Office of Rail and Road). Section 4 of the 1993 Act makes provision about the manner in which the Scottish Ministers are to exercise their rail functions. It makes broadly equivalent provision for the ORR, the Secretary of State and the Welsh Ministers in relation to their functions. Section 4 also gives the Scottish Ministers the power to issue guidance to the ORR about the exercise of certain

functions that it has. Insofar as this provision repeals this duty and power of the Scottish Ministers, this clause alters their executive competence.

61. Schedule 3, paragraphs 8 and 25 repeal section 19A and schedule 4A (Review of Access Charges by ORR) of the 1993 Act. Section 19A introduced schedule 4A which conferred various powers and duties on the Scottish Ministers in relation to the review of access charges and funding of railway infrastructure. Insofar as this provision repeals statutory functions of the Scottish Ministers under the 1993 Act, it alters their executive competence.

62. Schedule 3, paragraph 9 repeals sections 23–31 of the 1993 Act (provision of passenger services) which confer on the Scottish Ministers (and the Secretary of State and the Welsh Ministers) various powers and duties as franchising authority in relation to the provision of rail passenger services in Scotland. Insofar as this provision repeals functions conferred on the Scottish Ministers, it will alter their executive competence.

63. Schedule 3, paragraph 12 repeals section 54 of the 1993 Act (Exercise of functions for the purpose of encouraging investment in railways). Section 54 enables the Scottish Ministers (and the Secretary of State and Welsh Ministers) to enter into an undertaking to: exercise their “franchising functions”; not to do so; or to do so in a particular manner. Insofar as this provision repeals this function, it alters the Scottish Ministers’ executive competence.

64. Schedule 3 paragraph 13 amends section 55 of the 1993 Act (Orders for securing compliance) by repealing subsections (5) and (5C). Subsection (5) provides that the Scottish Ministers cannot make such an order if they consider they are prevented from doing so by the duties in section 4 of the 1993 Act (which is repealed by paragraph 4 of schedule 3). Subsection (5C) allows the Scottish Ministers to make an order to secure compliance with a franchise agreement. Insofar as this provision amends the functions of the Scottish Ministers to make orders under section 55, it alters their executive competence.

65. Schedule 3 paragraphs 14–17 amend sections 59, 62 and 63 of the 1993 Act (Railway administration orders). Sections 62 and 63 give the Scottish Ministers as “appropriate national authority” various functions in relation to railway administration orders for Scottish protected railway companies. A “Scottish protected railway company” is a protected railway company (i.e. a private sector operator holding particular licences) only in respect of activities carried on by it under a Scottish franchise agreement. Insofar as these provisions remove functions of the Scottish Ministers, they alter their executive competence.

66. Schedule 3 paragraph 18 repeals section 64A of the 1993 Act (Financial assistance by Scottish or Welsh Ministers) which contains a power for the Scottish Ministers to provide financial assistance where a railway administration order is in force in relation to a Scottish protected railway company. Insofar as this provision removes functions of the Scottish Ministers, it alters their executive competence.

67. Schedule 3 paragraph 22 amends section 83 (Interpretation) of the 1993 Act to remove definitions, including the definition of terms on which the Scottish Ministers' functions in section 23-31 of the 1993 Act (which are repealed by paragraph 9 of schedule 3) relied. Insofar as this provision removes those definitions, it also alters the Scottish Ministers' executive competence.

68. Schedule 3 paragraph 26 amends paragraph 7 of schedule 2 of the 1993 Act (Transfer of relevant activities in connection with railway administration orders). This provision allows for the transfer of property, rights and liabilities where a court has made a railway administration order in relation to a protected railway company and it is proposed that another company should carry on the relevant activities of the protected railway company. The amendments remove the functions of the Scottish Ministers (in relation to a Scottish protected railway company) in relation to the approval of such schemes. As noted above, the Scottish Ministers' franchising functions as "appropriate national authority" in relation to railway administration orders are repealed by paragraphs 14-17 of schedule 3. Insofar as it removes functions of the Scottish Ministers in relation to these transfers, this provision alters their executive competence.

69. Schedule 3, paragraph 33 amends section 5 of the 2005 Act (Railway strategy for Scotland) to insert an obligation on the Scottish Ministers when preparing or revising a strategy under section 5 to consult the Passengers' Council. The Secretary of State is subject to the same duty when preparing her long-term rail strategy under clause 15 of the Bill. Insofar as this provision imposes a new duty on the Scottish Ministers, it alters their executive competence.

70. Schedule 3 paragraph 53 amends the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 ("the 2016 Regulations"). The 2016 Regulations implement EU Directive 2012/34 establishing a single European railway area. This paragraph revokes regulation 11 of the 2016 Regulations which confers a function on the Scottish Ministers to publish an indicative railway structure strategy for Scotland which must be drafted with a view to meeting future mobility needs in terms of the maintenance, renewal and development needs of the railway infrastructure in Scotland and be based on sustainable financing. Insofar as this provision removes a duty on the Scottish Ministers, it alters their executive competence.

71. The UK Government's position is that clause 87 and schedule 3 make minor and consequential amendments. Although some of these provisions remove Scottish Ministers' functions, these are replaced by new functions under the Bill and legislative consent is only required for the modification of the function within the clause that sets out the new function.

72. The Scottish Government's position is that the provisions in clause 87 and schedule 3 modify or repeal Scottish Ministers' functions. In some cases, the provisions being repealed are made redundant by provision contained in the Passenger Railway Services (Public Ownership) Act 2024 or this Bill. In the remaining cases the Bill confers new functions which are similar to the functions being modified or repealed. However, the existing and new functions are all different in various respects. That being so, each of the modifications and repeals in clause 87 and schedule 3 (and the provisions

conferring similar but different new functions) alter the executive competence of the Scottish Ministers.

Part 4, clause 90 (General interpretation)

73. This clause defines “jointly owned” and “statutory functions”. The new functions conferred on the Scottish Ministers in clauses 4, 8, 10, 35 and paragraph 13 of schedule 2 rely on these definitions and as such, this clause also confers functions on the Scottish Ministers and alters their executive competence.

74. The UK Government’s position is that the definitions in section 90 are the same as those set out in the Railways Act 2005 and as such there is no modification of Scottish Ministers’ executive competence.

75. The Scottish Government’s position is that the definitions in section 90 are required in order to understand the functions conferred elsewhere in the Bill. The UK Government agrees that each of these clauses alters the executive competence of the Scottish Ministers and the definitions in section 90 are needed in order for those clauses to be understood and operate. As such, clause 90 also alters the executive competence of the Scottish Ministers.

Reasons for recommending legislative consent

76. Section 28(8) of the Scotland Act 1998 recognises that the UK Government will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament. Devolution Guidance Note 10 states that Bills require the consent of the Scottish Parliament if they contain provision applying to Scotland and which are for devolved purposes or if they alter the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers.

77. As described above, the Scottish Government is presently of the view that all of the provisions referred to in the preceding paragraphs alter the executive competence of the Scottish Ministers.

78. The Bill will not deliver full devolution of railways, which remains the preferred position of the Scottish Government. However, this is not supported by the UK Government. There has been positive and meaningful consultation with the Scottish Government throughout the development of the Bill and a noticeable desire on the part of the UK Government to seek and reflect the views of the Scottish Ministers.

79. The Scottish Government’s view is that the provisions in the Bill are broadly consistent with the Scottish Government’s policy position on the best way to deliver rail services and respect the current devolved arrangements. The Scottish Ministers will continue under the Bill to set strategy, fund and specify the railway in Scotland. It will also continue to be responsible for the provision of ScotRail and Caledonian Sleeper services.

80. The Bill will also introduce a number of improvements which will benefit rail users, communities and businesses across Scotland. It will provide the Scottish Ministers with a range of public sector options for passenger service delivery that could enable deeper integration of rail passenger and infrastructure services, building on the success of the Alliance model already in place. The Bill also introduces a number of provisions which will ensure greater accountability to the Scottish Ministers (and through them, the Scottish Parliament) for services and infrastructure in Scotland, including the new powers for the Scottish Ministers to give Directions and Guidance to GBR, the new funding regime and the duties on GBR in exercising its functions to have regard to the Scottish Ministers' rail strategy. The Bill will also ensure that the Scottish and UK governments cooperate on matters of shared interest through the requirement for a statutory Memorandum of Understanding.

81. Were legislative consent not to be given, and if the Bill was amended to exclude Scotland, Scotland would simply miss the opportunity for change. Scotland's services are already among the best in the UK with regards to performance and customer service. Failing to take advantage of the opportunities presented by the Bill would put progress at risk and, at worst, lead to Scotland being in an adverse position compared with other parts of the UK with regards to the effectiveness of rail services.

Consultation

82. As this is a UK Bill, the Scottish Government had no locus to consult on its contents. On 18 February 2025, the UK Department for Transport launched an 8-week consultation on proposals for rail reform, including the content of a Railways Bill and published its response to this following the Bill's introduction on 5 November 2025.

83. The UK Government's consultation on rail reform, 'A railway fit for Britain's future', can be found here: [A railway fit for Britain's future - Consultation outcome | www.gov.uk](https://www.gov.uk/government/consultations/a-railway-fit-for-britains-future).

84. The UK Government's summary of the consultation responses and the UK Government's response to the consultation responses can be found here: [A railway fit for Britain's future: government response - Policy paper | www.gov.uk](https://www.gov.uk/government/consultations/a-railway-fit-for-britains-future).

85. The Scottish Government did not provide as response to the consultation, given its role as a devolved government. However, the Scottish Government, via Transport Scotland, has engaged with the UK Government, via the Department for Transport, on a regular basis on the development of the Bill.

Financial implications

86. The requirement for the Scottish Ministers to fund and specify both the infrastructure and services for railways in Scotland will continue under the Bill. The processes for identifying reasonable costs and funding requirements of the Scottish Government and the things that will be required to be funded will be broadly similar under the Bill. A key difference will be that the Scottish Ministers will approve the final Scottish Business Plan for GBR, which is currently the role of the ORR.

87. The McNulty review report in 2011 expressed the view that a fragmented rail industry structure and misaligned incentives were major barriers to cost reduction and efficiency. As a consequence, a significant efficiency gap had developed between Network Rail and equivalent international bodies, quantified at 34% to 40% relative to top-performing European railways. The subsequent Williams review in 2021 placed a priority on the simplification and integration of rail industry structures, which it calculated could result in savings equivalent to £1.5 billion per annum at GB level.

88. Therefore, as well as improvements to the delivery of rail services, it is anticipated that greater integration may deliver sizeable efficiency benefits.

Other relevant considerations

89. The Scottish Government does not currently anticipate any major changes in UK Government policy in terms of that which is within the current draft of the Bill. As a consequence, the Scottish Government does not foresee a change in its consent recommendation for the Bill, albeit the Bill may be subject to amendment as it progresses through the UK parliamentary processes, which may give rise to supplementary LCMs.

Post EU scrutiny

90. The Bill will make various amendments to assimilated law, specifically: (i) the Railway (Licensing of Railway Undertakings) Regulations 2005¹; (ii) Regulation EC No 1371/2007 on rail passengers' rights and obligations ("Regulation 1371/2007") and The Rail Passengers' Rights and Obligations Regulations 2010; and (iii) the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016.

91. The Scottish Government's position is that some of the amendments in view create potential for divergence with the EU; specifically, the amendments to the Railway (Licensing of Railway Undertakings) Regulations 2005 ("the 2005 Regulations") which implement Council Directive [95/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings and the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 ("the 2016 Regulations") which implement Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012, establishing a single European railway area. Schedule 3 of the Bill amends the 2005 Regulations to exempt GBR from the licensing provisions in the 2005 Regulations. Provision for licensing of GBR is instead set out in schedule 1 of the Bill. Some of the requirements set out in the 2005 Regulations (relating to independence of a licensee and fitness to hold a licence) are not replicated in the provisions in schedule 1 of the Bill. Clause 70 of the Bill amends the 2016 Regulations to exempt GBR from the provisions of those Regulations that would otherwise apply to GBR infrastructure. Access, use and charges for railway infrastructure operated by or on behalf of GBR are instead to be governed by Chapter 1 of Part 3 of the Bill. Some of the requirements in the 2016 Regulations (relating to independence of railway undertakings) are not replicated in Chapter 1 of Part 3 of the Bill.

92. However, all of the amendments in view relate to the provision and regulation of railway services, which is a reserved matter. They do not impact on any areas of devolved competence.

Conclusion

93. It is the considered view of the Scottish Government that this Bill does not compromise the current executive powers of the Scottish Ministers. It will provide the Scottish Government with enhanced public sector options to deliver deeper integration of rail passenger and infrastructure services and improve the overall accountability of the rail system to the Scottish Ministers and the Scottish Parliament. Critically, it offers the opportunity to improve the efficient and effective delivery of services for the benefit of Scotland's rail users, businesses and communities. The Scottish Government therefore recommends consent to all of the clauses and provisions outlined in paragraphs 7 to 75 above.

Draft motion on legislative consent

94. The draft motion, which will be lodged by the Cabinet Secretary for Transport, is:

“That the Parliament agrees that the relevant provisions of the Railways Bill, introduced in the House of Commons on 5 November 2025, relating to clauses 4, 7-10, 12, 18, 19, 22, 23, 25, 26, 28-35, 39, 43, 48, 66, 75, 78, 80, 81, 87, 90, paragraphs 1, 2, 8-14 and 16 of schedule 2 and paragraphs 4, 8, 9, 12-18, 22, 25, 26, 33 and 53 of schedule 3, should be considered by the UK Parliament.”

Scottish Government
December 2025

This Legislative Consent Memorandum relates to the Railways Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 12 December 2025

Railways Bill – Legislative Consent Memorandum

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