PROVISION OF RAIL PASSENGER SERVICES (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Provision of Rail Passenger Services (Scotland) Bill introduced in the Scottish Parliament on 29 September 2006. It has been prepared by Tommy Sheridan MSP, the member in charge of the Bill, to satisfy Rule 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the member in charge and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 78–EN.

POLICY OBJECTIVES OF THE BILL

2. The Railways Act 2005, an Act of the UK Parliament, significantly overhauls the previous position in relation to the provision of rail passenger services in Scotland and hands new and important powers to Scottish Ministers. The proposal and the Bill seeks to direct Scottish Ministers to use these new and far-reaching powers over rail passenger services in Scotland to remove the profit motive from the service, thus delivering a not-for-profit rail passenger publicly or by another appropriate not-for-profit provider from the end of the current ScotRail franchise in 2011.

Why publicly operated passenger rail services?

3. The social value of the rail network is well established, in terms of promoting social inclusion, supporting accessibility, encouraging economic growth and regeneration or assisting the development of the tourist and leisure industries. Rail is particularly important for the 32.1% of Scottish households in 2005 that did not have cars available for private use.[1]

4. The railway also plays an important part in 'Scotland's integration' linking urban centres with more isolated communities who depend heavily on rail and other public transport links. Additionally, in comparison to the private car and aviation, rail has clear environmental benefits.

5. In the early 1990s the Conservative Government announced that the railway industry was to be broken up and sold off. It argued that the private sector would find the finance for a much-needed investment programme in the industry and that market forces would encourage the provision of new and more efficient services for passengers.

[1] Main Transport Trends – Statistical Bulletin Transport Series Trn/2006/5 – August 2006

6. After the 1997 General Election, the Department of Environment, Transport, Local Government and the Regions' July 1998 White Paper*: A New deal for Transport: better for everyone,* spoke of the "potential for a rail renaissance". Regrettably, more than eight years later and more than a decade since 1993 Railways Act, rail privatisation has failed miserably to deliver a rail renaissance.

7. Costs have spiralled, with in 2005/06, public funding for the railway industry, including the Channel Tunnel Rail Link (CTRL), standing at £4.5billion. (See Table A).[2]

TABLE A

Department For Transport (all figures at £m at cash prices)	**2005-06**	**2006-07**	**2007-08**	**2008-09**
Government support to Franchises	1,066	1,501	1,353	1,417
Network Grant	1,843	2,883	2,832	2,651
Enhancements	33	18	27	34
Freight	22	26	21	20
Other	206	201	175	177
Total Govt commitment to franchise support, Network Rail and other	3,170	4,629	4,408	4,299
CTRL	1,387	1,181	180	93
Total Rail	4,557	5,810	4,588	4,392

8. This massive injection of public monies has not, however, delivered reliability, value for money and service improvements due to the grossly inefficient and costly nature of the privatised rail industry. The Catalyst think-tank July 2004 working paper: *Renaissance delayed? New Labour and the railways,* maintains, "The private firms that now make up the railway industry are currently receiving public subsidy three times larger than that received by British Rail". The paper goes on to say "At the same time the fragmentation of the industry has meant

[2] Alistair Darling, written statement to House of Commons, 10 February 2005

that infrastructure costs continue to escalate, estimated to be now running at three to five times their level prior to privatisation, with much of the increase having taken place since 2000".[3]

9. The March 2005 Catalyst think-tank pre-election briefing: *The Railways in A Third Term* indicates that around £800 million a year - £15 million per week - is taken out of the UK rail industry as returns to private lenders and investors. This represents a total "leakage" of £6 billion since 1996.

10. In addition the September 2005 Catalyst working paper: *The performance of the privatised train operators* makes the point that the dividends paid to private sector shareholders are the result of "the extensive system of public subsidies rather than superior private sector management performance".[4]

11. All three Catalyst reports clearly illustrate the stark fact that private investment in the rail industry is paid for by the public – and then some more.

12. On 19 January 2004 the then Secretary of State for Transport, Alistair Darling, announced a major review of the structure and organisation of the railway industry, acknowledging, "taxpayers and farepayers alike need to know that their money is being well spent and that increased spending will increase performance" and "The way it (the rail industry) was privatised has led to fragmentation, excessive complication and dysfunctionality that have compounded the problems caused by decades of under-investment."[5]

13. The review led to the July 2004 *Future of Rail* White Paper, which acknowledged that the railway industry suffered from "problems caused by privatisation", which had bequeathed "an inefficient and dysfunctional organisation coupled with a failure to control costs".[6]

14. Bizarrely, the White Paper went on to enshrine the "principle of public and private partnership", and confirmed that the Government saw rail "as a public service, specified by Government and delivered by the private sector".[7]

15. This Bill aims to deliver the essential rail passenger service in Scotland under a public, not-for-profit arrangement.

Widespread support

16. It is worth registering that such a step already commands widespread support.

17. In 2003 a NOP opinion poll commissioned by the National Union of Rail, Maritime and Transport Workers found 72% of respondents in favour of rail public ownership. A UK-wide

[3] Catalyst working paper: Renaissance delayed? New Labour and the railways, July 2004, page 6
[4] Catalyst working paper: The performance of the private sector train operators, September 2005, page 33
[5] Alistair Darling, statement on the railways, House of Commons, 19 January 2004
[6] Department for Transport, Future of Rail White Paper, July 2004
[7] Department for Transport, Future of Rail White Paper, July 2004

Ipsos MORI poll recently commissioned in 2006 by the RMT found that only 15% of respondents thought that passenger rail services should be run by the private sector.

18. In February 2004 a TNS produced poll for the Scottish Socialist Party indicated that 44% of people agreed strongly and 23% of people agreed slightly that '*Utilities such as the railways, gas and electricity ought to be taken back into public ownership in Scotland*'. Only 6% of respondents disagreed strongly with the statement.

19. In September 2004, a YouGov survey, on behalf of the Transport Salaried Staffs' Association, found that 79% of people surveyed thought it was not acceptable that private train operators receive more public money than British Rail. 67% of those surveyed thought that rail passenger services should be run in the public sector.

20. The Trades Union Congress and Scottish Trades Union Congress (STUC) both have long-standing commitments in favour of public ownership of the rail network. In 2006 the STUC passed a motion on the railways which included "Congress resolves to prosecute its policy of re-nationalisation by lobbying the Scottish Executive to campaign for powers to take Scottish passenger services back under public control".

21. The 2004 UK Labour Party conference passed an amendment to a policy forum document that spoke of "resolving the fragmented structure of the (rail) industry by introducing an integrated, accountable and publicly owned railway".

22. The 2003 Scottish National Party, Scottish Parliament manifesto said "The ScotRail franchise, which provides passenger train services across most of Scotland, is due for renewal, and we believe that it too should be taken under public control through a Not for Profit Trust".

23. The 2006 Annual Conference of the Scottish Socialist Party reaffirmed its commitment to rail re-nationalisation.

24. The Green Party manifesto for the 2005 Westminster elections called for the railways to be brought back under public control.[8]

25. Finally, the think-tank Catalyst concluded "The government has committed substantial funds for public investment in the railways, and the indications of the recent spending review are that this commitment is not waning. It is right that government should seek to ensure that the public receives an adequate economic, social and environmental return on that investment. The most appropriate model for achieving this is a railway that is publicly owned and accountable".[9]

Scottish rail passenger services

26. Scotland's rail network consists of approximately 2,800 route kilometres of track, around 340 stations, with 68.7 million journeys originating in Scotland being made on ScotRail services

[8] Green Party Westminster 2005 manifesto. Available on line at http://www.scottishgreens.org.uk
[9] Catalyst working paper: Renaissance delayed? New Labour and the railways, July 2004

in 2004/05.[10] The commuter network in the west of Scotland is the busiest in the UK outside of London.

27. The following transport objectives are set out in the June 2004 White Paper: Scotland's Transport Future:

- Promote economic growth by building, enhancing, managing and maintaining transport services, infrastructure and networks to maximise their efficiency;
- Promote social inclusion by connecting remote and disadvantaged communities and increasing the accessibility of the transport network;
- Protect our environment and improve health by building and investing in public transport and other types of efficient and sustainable transport which minimise emissions and consumption of resources and energy;
- Improve safety of journeys by reducing accidents and enhancing the personal safety of pedestrians, cyclists, drivers, passengers and staff; and
- Improve integration by making journey planning and ticketing easier and working to ensure smooth connection between different forms of transport.

28. These laudable policy objectives can best be met if Scottish Ministers utilise their powers under the Railways Act 2005 and remove the profit motive from the operation of ScotRail services, thus delivering a not-for-profit rail passenger service provided publicly or by another appropriate not-for-profit provider.

29. The current ScotRail franchise, operated by First Group, began on 17 October 2004 and will run for seven years with the possibility of a three-year extension. The 20 August 2004 Strategic Rail Authority press release announcing the franchise award indicated that the total subsidy for the seven-year period would be £1.9 billion at 2004 prices.

30. Between 1997-98 and 2004-05, when services were operated by the National Express Group, public subsidies of to £1.9 billion were made to the ScotRail franchise.[11]

31. This means that since 31 March 1997 £3.8 billion of public money has been paid or is committed to be paid to private sector companies to run ScotRail passenger services.

32. Transport Scotland recently provided Tommy Sheridan MSP an explanation of how the private franchising operation works in Scotland. The explanation includes:

> *The contract is a fixed price "deal" to operate rail services on behalf of the Ministers. The Ministers specify the service level, quality etc and in response the bidders for the franchise show, via a financial model, the price for which they are willing to operate the franchise.*
>
> (*b*)*Simply put the model is an equation:*

[10] Scottish Executive: Transport Statistics No.24 (2005)
[11] Scottish Parliament written reply 6 September 2005

Costs + profit – revenue (mainly fares) = subsidy.

(c)Costs are the bottom-up rolling stock, staff, access charge and other costs of operating the service level specified.

Profit is the level of profit the franchisee is looking for to deliver the contract.

Revenue is the level of fares and other incomes the franchisee is forecasting for the 7 years of the contract.

Each of these assumptions was tested and ultimately contractualised in the financial model in the contract. Because the figure generated is a minus, a subsidy is required (of circa £2bn over 7 years). Accordingly there is in truth no absolute "contribution" from First ScotRail, this being a contract for services requiring a subsidy rather than say an infrastructure contract or other joint venture.

33. Simply put this financial model amounts to the following equation: Costs + Profit – Revenue (Mainly fares) = SUBSIDY. Thus we, the taxpayers and farepayers, pay the private company, First ScotRail, to manage the rail services under certain specifications and with a guaranteed level of profit.

34. Indeed, recent reports reveal that First ScotRail is generating sizeable operating margins. The May 2006 issue of Modern Railways magazine reports that in 2004/05 First ScotRail showed an operating margin of 5.8% on a turnover of £183.1 million. On 17 May 2006 First Group published their preliminary results for the year to 31 March 2006. Across the whole group UK rail operating profits rose by 23% to £79.6 million.[12] Press reports indicate that ScotRail's contribution was a full-year profit of £13 million.[13]

35. The member in charge of this Bill concludes that if these profit levels were to be removed from the franchising equation then rail services in Scotland could be run directly by Scottish Ministers, or by another not-for-profit organisation, for less public subsidy than that currently being paid to the franchise holder.

South Eastern Trains

36. The central thrust of this Bill is the contention that rail passenger service can be run more efficiently and economically in the public sector than in the private sector.

37. It is now clear that British Rail was already highly efficient and that there was little scope for reducing costs further without jeopardising service delivery (see Table B from September 2005 Catalyst working paper: *the performance of the privatised train operators*).

[12] First Group preliminary results for the year to 31 March 2006 available at www.firstgroup.com
[13] The Scotsman, Thursday 18 May 2006

TABLE B

	Train Km per member of staff		Ave passenger train loading		Ave freight train loading		% support from public funds	
	BR	Eur ave	BR	Eur ave	BR	Eur ave	BR	Eur ave
1986-87	2,990	2,162	95	131	244	296	0.21	0.67
1987-88	3,127	2,233	97	130	253	296	0.22	0.67
1988-89	2,928	2,133	96	143	268	302	0.14	0.72
1989-90	3,422	2,301	92	144	217	311	0.12	0.70
1990-91	3,289	2,320	89	144	268	322	0.14	0.68
1991-92	3,106	2,424	86	139	316	323	0.16	0.52
1992-93	3,205	2,527	86	143	315	324	0.20	0.56
1993-94	3,463	2,220	83	130	267	319	0.18	0.59

38. In the one instance where the now wound-up Strategic Rail Authority (SRA) removed a private operator from a franchise the results are noteworthy. Connex was the franchisee in South East England which was the second largest passenger franchise in the UK, employing around 3,500 staff, serving 182 stations and carrying approximately 400,000 passengers a day.[14]

39. During the period between 1996 and November 2003 when Connex operated South Eastern passenger services they received more than £500 million in public subsidy.[15] In December 2002 Connex requested additional money from the SRA and were awarded £58.9 million.[16] However the SRA became increasingly concerned about the operation of the franchise and stripped Connex of control in 2003. The SRA press release announcing their action explained "Reasons for this decision include Connex's failure to meet a detailed action programme of improvements which was a requirement before the SRA was prepared to consider any increase in subsidy for the period 2004-6"[17]

40. Between 9 November 2003 and 1 April 2006 the former Connex services were operated by South Eastern Trains (SET), a subsidiary of the SRA.

41. Under public control performance improved significantly. In the year to 30 September 2003, the private sector operator Connex operated 78.7% of services on time.[18] In the year to 31 December 2004, their first full year of operating passenger services, South Eastern Trains ran 83.6% of trains to time.[19] This was a better performance than that of the train operators with

[14] National Audit Office report: The South Eastern Passenger Rail Franchise, December 2005
[15] Strategic Rail Authority Annual Report 2005
[16] National Audit Office report; The South Eastern Passenger Rail Franchise, December 2005
[17] Strategic Rail Authority press release 27 June 2003
[18] Strategic Rail Authority: National Rail Trends 2003-2004 Quarter 2
[19] Strategic Rail Authority: National Rail Trends 2004-2005 Quarter 3

whom South Eastern Trains (SET) is most readily compared: South West Trains and Southern, who operated 77.4% and 80.7% of trains to time respectively.[20]

42. The Catalyst report: *Renaissance Delayed? New Labour and the Railways* maintains that the experience at South Eastern Trains demonstrates, "the private train operators are no more efficient either in financial or non-financial terms than their publicly owned counterpart" and "There simply is no justification for continuing with the franchising of train operations to private providers if, as independent analyses and the practical experience of South Eastern Trains indicates, the service can be provided just as well by the public sector without the extra costs and disruption of privatising them." The report recommends that services should be taken back in-house as their franchises expire.

43. The December 2005 National Audit Office Report: *The South Eastern Passenger Rail Franchise* maintains that "improvements in Network Rail's performance have made the single biggest contribution to reduced train delays on train services across the national rail network and for SET and its comparator TOCs, as Network Rail continued to improve from low levels of performance after the Hatfield derailment in October 2000".

44. The member in charge of the Bill is of the view that Network Rail improvements have been assisted in no small part by the removal of private sector companies, including Balfour Beatty and Jarvis, from maintenance work on the railway infrastructure. This has both reduced costs and introduced a unified management structure which has been able to deal more efficiently with infrastructure maintenance functions. Indeed, the 2005 Network Rail Limited Annual Report and Accounts explains "The bringing in-house of maintenance has been a success on both operational and financial fronts".[21]

45. In terms of value for money the National Audit Office (NAO) report considered that if South Eastern Trains ran passenger services until the end of March 2006 it might, on a like-for-like basis, cost the taxpayer £6 million less than the amount the SRA had estimated. The NAO explains that "SET's costs to the taxpayer have therefore been well controlled to keep them in line with the SRA's original estimate". In the event South Eastern Trains was re-privatised on 1 April 2006.

46. The NAO also estimated that until March 2006, SET might, on a pro-rata basis, cost almost £22 million more than the £383 million that Connex had been prepared to accept to run the franchise. Importantly, the NAO goes on point out: "The SRA had little confidence, however, that CSE would be able to run the franchise within the £383 million it was prepared to accept."

Greater financial transparency

47. Post-privatisation billions of pounds of public money has been spent on Scottish rail services. Operating passenger services along the lines in this Bill will see greater transparency, democratic oversight and accountability replacing the current arrangements which are shrouded

[20] Strategic Rail Authority: National Rail Trends 2004-2005 Quarter 3
[21] Network Rail Limited 2005 Annual Report and Accounts, page 7

in the cloak of commercial confidentiality. Three recent Parliamentary Questions help illustrate the point.

> ***S2W-25212 - Alex Neil (Central Scotland) (SNP) (Date Lodged 12 April 2006) :*** *To ask the Scottish Executive what proportion of First Scotrail's operating budget is met by subsidy from public funds, and what proportion of the Strathclyde Partnership for Transport's operating budget is met by revenue raised from collection of fares.*
>
> ***Answered by Tavish Scott (12 May 2006):*** *Financial information relating to First ScotRail's operating costs is commercially confidential and cannot be released. However, the Scottish Executive will pay First ScotRail approximately £1.9 billion in ScotRail franchise payments over the seven-year life of the franchise, subject to variation according to performance.*
>
> *None of Strathclyde Partnership for Transport's operating budget will be met from fares revenue collected under the ScotRail franchise.*
>
> ***S2W-18287 - David Davidson (North-East Scotland) (Con) (Date Lodged 2 August 2005)****:* *To ask the Scottish Executive which routes on the ScotRail network are profitable.*
>
> ***Answered by Tavish Scott (7 September 2005):*** *Under the Franchise Agreement, the costs associated with the operation of rail services are transparent and full information on revenue levels is obtained by the Scottish Executive. However, financial information on profitability of individual routes is not available, as it is commercially confidential.*
>
> ***S2W-18286 - David Davidson (North-East Scotland) (Con) (Date Lodged 2 August 2005)****:* *To ask the Scottish Executive how much of the fare revenue raised under the First ScotRail franchise has been (a) re-invested in services, (b) paid to First Group plc and (c) used for any other purposes, shown in cash terms and as a percentage of total revenue raised.*
>
> ***Answered by Tavish Scott (6 September 2005):*** *The Scottish Executive has received excess revenue share from the First ScotRail franchise in respect of the franchise year ending in April 2005. Under the Franchise Agreement, First ScotRail Limited retain the remaining revenue. This in addition to the subsidy they receive covers their operating costs and profit. The sum received by the Scottish Executive was used to lower the subsidy paid to the franchisee.*
>
> *Information on the revenue raised under the ScotRail franchise is commercially confidential.*

Rail fares

48. Train fares are too expensive and ticketing structures are fragmented and overly complex.

49. On 19 May 2006 the House of Commons Transport Select Committee published the: *How fair are the fares? Train fares and ticketing* report. The Committee found that the 'see how much we can get away with' attitude of the train operators had "put the thumbscrews on passengers who have no option but to travel on peak-hour trains, using fully flexible Open fares. Such behaviour has brought not only individual train operators, but the passenger railways in general into disrepute".

50. The July 2006 House of Commons Environmental Audit Committee report; *Reducing Carbon Emissions from Transport* confirmed the Transport Committee's conclusion that the current ticketing structure of train operating companies is "not fit for purpose".

51. In January 2006 ScotRail passengers faced an average increase of 3.9% in regulated fares and 3.7% in unregulated fares. Renewals on season tickets made before 17 December 2005 could get 5% Passenger Charter discounts in the Central, East and Strathclyde PTE areas.[22] Press reports indicated that some fares between Edinburgh-Glasgow were increasing by up to 8.5% and between Glasgow-Stirling by up to 9.6%.[23]

52. It is self-evidently the case that if a not-for-profit provider operated rail services in Scotland then ScotRail passengers would benefit by not being, in the words of the 19 May 2006 Transport Select Committee report, "held to ransom by a system that is deeply flawed".

CONSULTATION

53. The member in charge of this Bill carried out a consultation exercise between June and August 2006. Copies of the consultation paper were sent in hard copy and/or electronically to rail industry stakeholders, trades unions, political parties, academic institutions, local authorities, academic institutions and Regional Transport Partnerships.

54. Responses were received from the Scottish Trades Union Congress, Professor Chris Baldry of the University of Stirling, North Lanarkshire Trades Council, Scottish Chambers of Commerce, Virgin Trains, First ScotRail and TGWU Branch No 7/60/87 Scottish Coal.

55. Four of the seven respondents supported the Bill. It was stated that rail services could be operated more efficiently and economically in the public sector. One respondent made reference to the role that rail can play in promoting a greener, healthier Scotland. The same respondent favoured returning rail passenger services to public hands before the current franchise expires in 2011.

56. A further supporter of the Bill maintained that returning passenger services to public control would inject a degree of rationality back into the rail industry in Scotland.

57. One respondent who does not support the Bill argued that the current franchising arrangements are working well and delivering a safe and reliable railway in Scotland. Another respondent did not believe that any direct evidence had been provided to indicate that a not-for-profit operator would provide a better service or improve safety or integration.

58. The same respondent maintained that the operating margin of the current franchise holder was good value for money given the risks that they bore. The respondent further maintained that the experience at South Eastern Trains did not support the case for publicly owned rail passenger services and provided figures indicating that South West Trains and Southern Trains had greater improvements in punctuality than South Eastern Trains between 2003 and 2006.

[22] Association of Train Operating Companies press release 8 December 2005
[23] Glasgow Evening Times 2 January 2006

59. However the member in charge of the Bill believes that punctuality improvements at South West Trains are largely a result of the introduction of a new timetable in December 2004 that allowed for longer dwell times at stations thereby making post-December 2004 comparisons extremely problematic. It is for this reason that pre-December 2004 comparisons were made in the consultation document.

60. A consultation summary and conclusions was published with the formal Bill proposal and can be viewed on the Scottish Parliament website at http://www.scottish.parliament.uk/business/bills/pdfs/mb-consultations/ProposedRailPassengerFinalProposalConsultation.pdf

Changes following the consultation exercise

61. Having considered the consultation responses the member in charge of the Bill has decided not to make changes to the proposal or policy objectives of the Bill.

ALTERNATIVE APPROACHES

62. The member in charge of the Bill has considered whether alternative approaches can deliver the policy objective of Bill. One respondent to the consultation exercise maintained that the Bill should in fact go further than simply dealing with passenger services and re-integrate, in a single not-for-profit operator in Scotland, passenger services with the railway infrastructure.

63. However, the Railways Act 2005 does not confer on Scottish Ministers powers to re-integrate in the public sector all passenger services and the railway infrastructure. This approach proposed in the consultation response has been considered but deemed to be not appropriate to deliver the policy objective of the Bill.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT AND SUSTAINABLE DEVELOPMENT

64. This Bill has no direct effect on equal opportunities, human rights, local government or island communities.

65. The Bill does have an impact on sustainable development. Passenger rail services play an important role in supporting sustainable development.

66. Evidence presented by the Trades Union Congress to the House of Commons Environmental Audit Committee inquiry Reducing Carbon Emissions From Transport maintains "The presence of a dedicated rail service encourages businesses to invest in the local economy in a way, which is not the case if a town is served only by buses. Such investment can help to create employment opportunities, retail outlets and other leisure facilities thereby encouraging social development and economic regeneration".

67. The member in charge of the Bill endorses these remarks and believes that the provisions of this Bill will enable policy makers to plan and integrate public transport across modes in an efficient and economic fashion for the benefit of the travelling public and the public purse.

This document relates to the Provision of Rail Passenger Services (Scotland) Bill (SP Bill 78) as introduced in the Scottish Parliament on 29 September 2006

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