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Pàrlamaid na h-Alba

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Delegated Powers and Law Reform Committee

Legislative Consent Memorandum and supplementary Legislative Consent Memorandum for the Railways Bill (UK Parliament legislation)



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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.

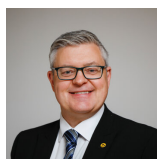


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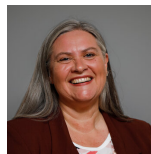
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Introduction

1. This report considers the delegated powers that are exercisable within devolved competence in the [Railways Bill](#) (“the Bill”).
2. The Committee considered the [Legislative Consent Memorandum](#) (“LCM”) for the Bill by virtue of Rule 9B.3.6 of the Parliament’s Standing Orders. Paragraph 6 of Rule 9B.3 provides that where the Bill that is the subject of an LCM contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee shall consider and may report to the lead committee on those provisions.
3. The LCM is also being considered in terms of the Committee’s wider remit contained in Rule 6.11.1(d) of the Standing Orders which provides that the remit of the Committee includes considering whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

Original Legislative Consent Memorandum

4. The LCM was lodged on 12 December 2025. The subject matter of the Bill is entirely reserved; however, various provisions of the Bill alter the Scottish Ministers’ executive competence. The Scottish Government is recommending consent be given in the LCM.
5. The Committee considered the relevant delegated powers in the LCM in the Bill at its meetings on 20 January and 3 March 2026.
6. At the meeting on 20 January, the Committee agreed to send questions to [the Scottish Government](#) and [the UK Government](#) in relation to certain delegated powers.
7. The Committee received responses from [the Scottish Government](#) on 30 January 2026, and [the UK Government](#) on 3 February 2026.
8. At the meeting on 20 January 2026, the Committee also agreed that it was content with the following delegated powers in the Bill:
 - Clause 8: Power for the Scottish Ministers to issue Directions to Great British Railways (“GBR”); and
 - Clause 29: Power to grant exemptions from designation
9. As the Bill progresses through the UK Parliament, there may be further amendments which trigger the need for a further supplementary LCM.

Supplementary Legislative Consent Memorandum

10. A [Supplementary Legislative Consent Memorandum](#) (“sLCM”) was lodged on 20 February 2026 which introduces one new non-legislative delegated power on the Scottish Ministers.
11. Given the timing of receipt of the sLCM (close to the end of this Session of

Parliament), at its meeting on 3 March 2026, the Committee agreed to note the power in the sLCM at that stage, and defer consideration to its successor Committee in the new parliamentary session. This is set out in more detail at the end of this report.

12. The lead committee for the LCM and the sLCM is the Net Zero, Energy and Transport Committee.

Overview of the Bill

13. The Bill was introduced by the UK Government in the House of Commons on 5 November 2025. The Second Reading in the House of Commons took place on 9 December 2025 with amendments subsequently being made to the Bill at Committee Stage. The Bill is now at Report Stage.
14. The Bill is made up of 4 parts and 3 schedules. Its provisions extend to England, Wales and Scotland.
15. The stated purpose of the Bill is to enable the creation of GBR, a new body, to be the “directing mind” for railways with responsibility for the infrastructure and rail passenger services to address the issues identified with rail services including unreliability, poor customer satisfaction and poor value for money.
16. Part 1 and schedules 1 and 2 of the Bill establishes GBR and sets out a range of statutory functions it will be required to exercise, including licensing and funding arrangements. Part 2 defines how passenger rail services are designated and related provisions. Part 3 covers access to rail infrastructure, rights of appeal to the regulator and gives the Office of Rail and Road (“ORR”) power to monitor the performance of GBR. Part 4 contains other general provisions including amendments to other legislation and commencement and interpretation provisions.

Delegated Powers

17. A [Delegated Powers Memorandum](#) (“DPM”) has been prepared by the UK Government in relation to the delegated powers provisions in the Bill. As is normal for UK bills, the Scottish Government has not published a delegated powers memorandum. The Scottish Government’s views on the relevant clauses are set out in the LCM and the sLCM

Review of relevant powers

Clause 4: Exercise of functions of Scottish and Welsh Ministers

Power conferred on: Scottish Ministers

Power exercised by: Arrangements

Parliamentary Procedure: None

Provision

18. Clause 4 of the Bill provides that the Scottish Ministers may 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 the Scottish Ministers and GBR. Before making, varying or revoking arrangements under this clause the Scottish Ministers must consult the Secretary of State and GBR.
19. The Scottish Ministers must publish a document setting out the terms of the arrangements. Clause 4(6) states that if arrangements provide for the exercise of functions by GBR or a GBR company, then those functions are to be treated for the purposes of sections 7 to 10, 13 and 16 to 19 as statutory functions of GBR instead of as functions of the Scottish Ministers.

Committee consideration

20. The power to make arrangements on both the Scottish Ministers and the Welsh Ministers was not addressed within the DPM. It is permitting the Scottish Ministers to effectively sub-delegate their statutory functions to GBR. Allowing functions to be carried out by another body or conferring additional functions on an existing body when it is considered appropriate is a common feature in primary legislation. However, the Committee asked the UK and Scottish Governments whether this should be framed as a regulation making power to allow parliamentary scrutiny and oversight of what functions are to be delegated.
21. The response from the UK Government states that the ability to devolve these functions already exists. Clause 4 simply allows them to carry out those functions through other bodies that must follow the same duties as the Ministers. The UK Government does not think this should be a power to make subordinate legislation as Ministers already have the power to create these arrangements, and transparency is ensured through the requirement to publish the terms of any delegation. Clause 4 provides flexibility in how the Scottish Ministers deliver their devolved rail functions, supporting efficiency and better performance which are key aims of the Railways Bill.

22. The Scottish Government states in its response that:
- ” the provision allows for delegation of Scottish Ministers’ functions relating to railway services to a small, exhaustive list of other public sector bodies. Clause 4(4) makes clear that such delegation does not affect the Scottish Ministers’ responsibility for the exercise of their functions – arrangements made under Clause 4 will not divest the Scottish Ministers of the functions and they will remain accountable to the Scottish Parliament in relation to the exercise of the functions.
23. In its response, the Scottish Government also highlights that transparency and accountability is achieved through the publication of these arrangements and there is precedent in functions being delegated in this manner, as well as via subordinate legislation.
24. The Committee considers that while there are a number of non-legislative powers in this Bill that do raise questions, they do appear to be appropriate and proportionate in the context of this particular Bill and the overall policy intent. This Bill is attempting to take railways into public ownership and provide an appropriate framework in which to guide, influence and respond to issues arising enabling them to be run more efficiently and effectively.
25. The Committee also considers that flexibility in this case is required. This clause is allowing a limited range of the Scottish Ministers’ functions to be delegated to a specified public body, GBR, or other joint owned body with GBR. There is an extremely limited policy choice that can be made in the exercise of this power. Functions will either be delegated to GBR, or they will not be, with the Scottish Ministers publishing those functions and retaining overall responsibility for the delegation.
26. Given the bodies are specified publicly owned bodies, the functions are limited and no significant policy changes can be effected. The Committee is therefore, on balance, content with the power as drafted.

27. The Committee is content that this is not a power to make subordinate legislation and should not be.

Clause 8: Power for the Scottish Ministers to issue Directions to GBR

Power conferred on: Scottish Ministers

Power exercised by: Direction

Parliamentary Procedure: None

Provision

28. Clause 8 of the Bill provides that the Scottish Ministers may give directions to GBR as to the exercise in Scotland of its statutory functions so far as relating to Scottish railway activities. Before issuing any directions under this clause the Scottish Ministers must consult with the Secretary of State.

29. A direction issued by the Scottish Ministers may provide that a function is only to be exercised after consulting the Scottish Ministers, or with the Scottish Ministers' consent. Any direction issued by the Scottish Ministers is legally enforceable in civil proceedings. Any direction issued may be varied or revoked. All directions, and variations or revocations of them under the Bill, require to be published under clause 8(5).
30. Clause 8(7) provides that the Secretary of State may revoke a direction issued by the Scottish Ministers if the direction is inconsistent or in conflict with a direction given by the Secretary of State under clause 7; if it appears to the Secretary of State that the direction will affect railway activities that are not Scottish railway activities; or if it appears to the Secretary of State that the direction, or any part of it would not be within the legislative competence of the Scottish Parliament and does not relate to matters in relation to which the Scottish Ministers have functions. Before revoking a direction, the Secretary of State must consult with the Scottish Ministers, and any revocation by the Secretary of State must also be published.

Committee consideration

31. The Bill confers a power on the Secretary of State to issue directions to GBR on the exercise of its functions in clause 7 that the UK Government states in its DPM is a new, broader power than is currently provided for within legislation. This new power is said to provide the Secretary of State with effective oversight over GBR as sole shareholder to ensure they can act swiftly and transparently should there be serious operational failures, unforeseen crises, or to correct the policy of, or strategic direction set by, GBR if deemed necessary. It is also seen as appropriate that the Scottish Ministers can, as a funder, also have powers to direct GBR on their statutory functions within Scotland, but only in relation to Scottish railway activities.
32. GBR will be exercising statutory functions for which the Secretary of State will have oversight of and be accountable for. In addition, GBR will also be able to carry out statutory functions in relation to Scottish railway activities for which the Scottish Ministers retain overall responsibility for. The Committee therefore considers it would appear appropriate for the Scottish Ministers to be able to issue directions on the exercise of those statutory functions where it is needed in the event of issues arising, without the need for primary legislation to do so.
33. Clause 23 also impinges on this provision in that it provides that the Secretary of State and the Scottish Ministers must prepare and publish a memorandum of understanding setting out how they will work together in the exercise of their respective functions in relation to railways and railway services. Clause 23(2) sets out the things that the memorandum of understanding may contain which includes "*provision about the use to be made of the powers to give directions under sections 7 and 8*".
34. The Secretary of State is able to revoke a direction issued by the Scottish Ministers in specific circumstances which are outlined in clause 8(7), however, they require to consult with the Scottish Ministers before doing so. The Secretary of State can only exercise the ability to revoke a direction in circumstances specified in the Bill and they must also consult before making any such decision.
35. The Committee considers it would not be appropriate for this to be framed as a power to make subordinate legislation. The provision is to be used in a reactive

way to effectively “course correct” should issues arise in GBR’s exercise of the Scottish Minister’s functions and it would be disproportionate to make subordinate legislation for this to be done.

36. The direction issuing powers are not subject to any parliamentary procedure, but are required to be published, which the Committee considers appropriate and in line with other direction issuing powers.

37. The Committee is content with the power to issue directions in principle and that it is not subject to any parliamentary procedure.

The powers in clauses 10 and 22 each make provision for the issuing of guidance. As they are doing very similar things for differing bodies, these have been dealt with together below for the purposes of the Committee's consideration and recommendation.

Clause 10: Power for the Scottish Ministers to issue Guidance to GBR

Power conferred on: Scottish Ministers

Power exercised by: Guidance

Parliamentary Procedure: None

Provision

38. Clause 10 of the Bill provides that the Scottish Ministers may give guidance to GBR as to the exercise of its statutory functions in Scotland so far as relating to Scottish railway activities. GBR must have regard to any guidance issued by the Scottish Ministers when carrying out those functions. Guidance issued under this clause by the Scottish Ministers may be varied or revoked with any guidance, variations or revocations requiring to be published under clause 10(3).

Clause 22: Power for the Scottish Ministers to issue Guidance to the ORR

Power conferred on: Scottish Ministers

Power exercised by: Guidance

Parliamentary Procedure: None

Provision

39. Clause 22 of the Bill provides that the Scottish Ministers may give guidance to the ORR as to the exercise of its functions relating to railway services wholly or partly in Scotland or otherwise relating to railways in Scotland, with the exception of the matters listed in clause 22(2). The ORR must have regard to any guidance issued by the Scottish Ministers when carrying out those functions. Guidance issued under this clause by the Scottish Ministers may be varied or revoked with any guidance, variations or revocations requiring to be published under clause 22(5).

Committee consideration of clauses 10 and 22

40. The ability of Scottish Ministers to issue guidance is fairly standard in modern

primary legislation. It can supplement the understanding of the legislation and how it is to be implemented. It is therefore appropriate that these powers are conferred on the Scottish Ministers in the same way they are conferred on the Secretary of State, as GBR will be carrying out certain functions on behalf of the Scottish Ministers and ORR will have a regulatory oversight role in how GBR is carrying out those functions.

41. At its meeting on 20 January, the Committee considered it would not be appropriate or proportionate for these powers to be framed as powers to make subordinate legislation. However, the Committee did question whether there should be some form of parliamentary procedure attached.
42. Both the UK and Scottish Government responses agree that neither guidance requires to be subject to any form of parliamentary procedure. The UK Government writes that these powers may need to be used quickly to address challenges, so having an efficient process is important. They also note that the guidance the Scottish Ministers issue won't be binding on GBR or the ORR, but it lets them influence the areas they are responsible for while GBR keeps control of day-to-day operations.
43. The Scottish Government writes that these provisions are appropriate as drafted as GBR will have to follow the same general duties as Scottish Ministers when carrying out these functions. GBR must also follow the published delegation agreement and take account of the Scottish Ministers' railway strategy. The guidance issued under clause 22 is very similar to existing provision in other legislation with the ORR being required to consider any guidance issued by the Scottish Ministers. However, it does not have to follow it, with no specific sanctions or penalties if it chooses not to.
44. It is further stated by the Scottish Government that the guidance will mainly deal with operational and technical matters and may need to be issued, changed, or withdrawn quickly in response to events on the rail network or in the wider rail industry. In addition, the comments regarding clause 4 above in relation to the context of this particular Bill are also relevant here. Therefore, the Committee is content with the powers to make guidance as drafted.

45. **In relation to clauses 10 and 22, the Committee is content with the powers to issue guidance in principle and that they are not subject to any parliamentary procedure.**

Clause 26: Power for the Scottish Ministers to designate railway passenger services that they can provide or secure the provision of

Power conferred on: Scottish Ministers

Power exercised by: Designation

Parliamentary Procedure: None

Provision

46. Clause 25 requires the Secretary of State to designate the railway passenger services for which GBR should be responsible. It excludes Scotland-only and

Wales-only services, as well as exempted services.

47. Clause 26 of the Bill provides that Scottish Ministers must designate railway passenger services, or a description of railway passenger services, which may be provided by the Scottish Ministers, or the provision of which may be secured by the Scottish Ministers by direct award under a public service contract. The Scottish Ministers can only designate Scotland-only services, cross-border services which the Scottish Ministers consider should be provided together with designated Scotland-only services, or cross-border services which were provided by, or the provision of which was secured by, the Scottish Ministers under section 30 of the Railways Act 1993 immediately before this clause comes into force.
48. Before designating a cross-border service, or a description of services which includes a cross-border service, or varying or revoking a designation of a cross-border service, or a description of services which includes a cross-border service, the Scottish Ministers must consult with the Secretary of State. Any designation issued may be varied or revoked with all designations, variations or revocations requiring to be published in a manner the Scottish Ministers consider appropriate under clause 26(5).

Committee consideration

49. Designation is the process by which Scottish Ministers will formally identify railway passenger services that they may provide themselves or secure through public contracts. Once designated, these services will fall under the public service obligations framework, and the Scottish Ministers can operate the service directly or award a public service contract for the operation of the service.
50. The power to designate services is conferred on the Secretary of State under clause 25, the Scottish Ministers under clause 26 and the Welsh Ministers under clause 27. The DPM states that the powers will give each the ability to set the bounds of services that they can secure through GBR or they themselves can secure through a public sector company, such as Scotrail. The designation procedure is said to replicate existing procedures, it is described as uncontroversial and high-level in nature and publication is considered sufficient and appropriate in this instance.
51. At its meeting on 20 January, the Committee was not clear why a decision was taken to “upgrade” the provision in clause 29 from exemption in writing to the negative procedure, but not this provision. In response to the Committee's questions, the UK Government states that the designation does not create the legal requirement on the delivery body:
 - ” Scottish Ministers will continue to be accountable to the Scottish Parliament, and placing further legislative restriction on the designation process would limit Scottish Ministers’ ability to deliver as effectively.
52. The Scottish Government agrees that the provision is, in its view, appropriate as drafted. It states in its response that designation is the means by which the Scottish Ministers can identify services that are to be provided by Ministers or public sector bodies. It further notes that this is generally replicating existing provisions and will allow matters to be dealt with quickly and efficiently with any designation requiring to be published by the Scottish Ministers, providing transparency and accountability.

53. Again, considering the Bill as a whole, designating a service to be provided by a public body being done administratively allows this to be done much more quickly. The designation of services, and which services to designate, is considered appropriate to be done administratively in that very limited policy choices can be made via the exercise of the power. Services will be designated or they will not, and any designation requires to be published.
54. Given the information provided by both governments and the general context of the Bill, the Committee is content that this is not a power to make subordinate legislation and should not be.

55. The Committee is content that this is not a power to make subordinate legislation and should not be.

Clause 29: Power to grant exemptions from designation

Power conferred on: Scottish Ministers

Power exercised by: Regulations

Parliamentary Procedure: Negative

Provision

56. Clause 29 confers power on the Scottish Ministers, by regulations, to exempt from designation specified Scotland-only services. Regulations made under this provision are subject to the negative procedure.

Comment

57. The power to exempt services from designation is given to the Secretary of State under clause 28, and the Scottish Ministers and the Welsh Ministers under clause 29. The DPM states that these provisions are effectively replicating existing powers in the Railways Act 1993.
58. The DPM sets out the justification for the procedure chosen. The previous method of designation was via writing only, and the DPM states that this has been upgraded to the negative resolution procedure which is appropriate given the power is specific and limited with a specific outcome.
59. The Committee considers it appropriate for there to be a mechanism whereby services can be exempt from designation, and the negative procedure would allow the Parliament an opportunity for scrutiny and oversight of any exemptions.

60. The Committee is content with the power in principle and that it is subject to the negative procedure.

Power considered in the Supplementary LCM

61. A further non-legislative delegated power has also been added in at Committee Stage (new clause 62). This new clause confers power on the Scottish Ministers to

make one or more schemes for the transfer of property, rights and liabilities to and from GBR with various details being provided for in the schedule and other provisions about what the scheme can do. Similar powers have been added in in respect of the Secretary of State and the Welsh Ministers.

62. There is very limited information available on the power conferred in new clause 62 on the Scottish Ministers as it was amended into the Bill during the Committee Stage and it is not subject to a supplementary DPM.
63. Given the lack of available information on the sLCM, under normal circumstances, the Committee would consider asking questions of both Governments about this power. However, this would not be able to be dealt with before the end of the current Session. Therefore, rather than having the sLCM straddle two parliamentary sessions, the Committee notes the power and information set out in the sLCM at this stage, and defers consideration to its successor Committee in the next parliamentary session.

