

Net Zero, Energy and Transport Committee
Tuesday 3 September 2024
24th Meeting, 2024 (Session 6)

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

Background

1. The [Passenger Railway Services \(Public Ownership\) Bill](#) is a UK Government Bill introduced in the House of Commons on 18 July 2024. On 1 August, the Scottish Government lodged a [Legislative Consent Memorandum](#) (LCM) on the Bill. The Scottish Government recommends that consent should be given to the UK Parliament to legislate on the devolved matters in the Bill.

2. The Net Zero, Energy and Transport Committee has been designated lead Committee for scrutiny of the LCM, which mean it must consider and report on it.

3. The Bill is expected to move quickly at Westminster and (assuming it is agreed to) to be passed by the end of October. The Cabinet Secretary for Transport has therefore been invited to give evidence on 3 September, with the Committee then determining whether further evidence or information is necessary before reporting to the Scottish Parliament on the LCM.

Consent process for UK Bills affecting devolved matters

4. Chapter 9B of the Scottish Parliament's Standing Orders sets out a formal process to give the Scottish Parliament the opportunity to consent (or not) to UK legislation making provision in relation to devolved matters. An LCM lodged by the Scottish Government must —

- summarise what the Bill does and its policy objectives;
- specify the extent to which the Bill makes provision about devolved matters;
- explain why the Scottish Government considers it appropriate that consent is given or refused.

5. A motion on legislative consent is a motion seeking consent to relevant provisions or seeking refusal of the Scottish Parliament's consent to provisions in the UK Bill affecting devolved matters. A UK Bill considered to trigger a need for an LCM may affect devolved competence in more than one way. A motion may therefore propose consent to some of these elements but non-consent to others. Standing Orders specifies that a motion (whether consenting, refusing consent, or a mixture of both) should normally be lodged. If the Scottish Government does not intend to lodge a motion at the time of lodging the memorandum the LCM should explain why not.

Content of the LCM

6. The UK Bill will bring rail passenger services into public ownership on termination of any existing franchise contracts. ScotRail and Caledonian Sleeper services are already in public ownership, through existing “operator of last resort” powers. The Bill will put the nationalisation of train services on a firmer legislative footing. It will also prevent any future award of contracts to private operators, in effect legally securing the two services in public ownership for the foreseeable future.

7. The Bill comprises four clauses and a schedule. The Scottish Government’s position is that all of these require the consent of the Scottish Parliament as they alter the executive competence of the Scottish Ministers. The UK Government considers that every provision requires consent except clause 2(3), which gives the UK Government power to temporarily continue existing franchises. The LCM says:

“The UK Government considers clause 2(3) does not alter the Scottish Ministers’ functions and does not engage the legislative consent process. A letter outlining the UK Government’s devolution analysis said including an equivalent power for the Scottish Ministers was not considered necessary or appropriate as Scottish services are already in public ownership. However, clause 2(3) also inserts a new section 30C which defines the terms “direct award”, “public service contract”, “public sector company” and “the 2023 Regulations”. As these terms appear at new section 30(1A), their definitions impact how its provisions for arrangements for delivery of the Scottish Ministers’ duty at section 30(1) are to be understood. For this reason, it is considered that clause 2(3) does alter the executive competence of the Scottish Ministers and engages the legislative consent process.”

8. However, the Scottish Government has no objection to clause 2(3) on policy grounds and proposes consent to the whole Bill. The LCM contains this draft motion:

“That the Parliament agrees that all provisions of the Passenger Railway Services (Public Ownership) Bill, introduced in the House of Commons on 18 July 2024, so far as these matters alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

Next steps

9. Once it has taken evidence from the Scottish Government on 3 September, the Committee will discuss what further action to take in relation to the LCM, including whether more evidence or information is necessary, taking account of the likely UK Parliamentary timetable. It will also consider the Delegated Powers and Law Reform (“DPLR”) Committee’s report. The DPLR Committee’s report will relate to any delegated powers created by the Bill (e.g. for the UK Government to lay regulations or orders) which related to devolved matters.

10. The Net Zero, Energy and Transport Committee is likely to agree a short report on the LCM at a meeting in early October.

Clerks

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