

**Cabinet Secretary for Transport**

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Edward Mountain MSP

Convener

NetZero, Energy and Transport Committee

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20 September 2024

Dear Edward,

I am writing to you to follow up on the recent evidence session of the Net Zero, Energy and Transport Committee on the Scottish Government's Legislative Consent Memorandum in relation to the UK Government's Passenger Railway Services (Public Ownership) Bill (the Bill), and in response to your letter to me of 10 September 2024.

As you will be aware, there were a few items I had agreed to come back to members on during the session and I have addressed these in my letter below along with the specific question you raised in your letter.

The Committee (Douglas Lumsden MSP) had asked if the recent appraisal carried out in relation to replacement of the intercity train fleet could be shared with them. I wish to advise you, and Committee members, that unfortunately the Scottish Government cannot release the appraisal on the grounds that it contains commercially sensitive information that is pertinent to a live procurement.

I also wish to clarify that the reference to plans for a 65% replacement of ScotRail fleet, which was cited by Bob Doris MSP during the session, is not a Scottish Government commitment. It was included in a contract notice made by ScotRail Trains Limited and published on Public Contracts Scotland (PCS) website in 2022 as part of a procurement management process. The 2022 PCS entry related to procuring legal support for train procurement, rather than train procurement itself. This may be what has caused some confusion. It remains the case that the Scottish Government remains committed to renewing ScotRail's train fleet appropriately over time as is illustrated by my announcement at Committee of the procurement for replacement of ScotRail's High Speed Trains.

In relation to your letter of 10 September 2024, you asked about the extent to which the Bill would enable the Scottish Ministers to award contracts for the provision of passenger rail services to private operators.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

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As the Legislative Consent Memorandum states, and as I said in my evidence to the Committee, the Bill will amend the Railways Act 1993 (the 1993 Act) to replace the presumption that rail passenger services designated under section 23(1) ought to be delivered by franchise agreements with a presumption that they ought to be provided according to franchising authorities' duty at section 30(1). The Bill will amend section 30 so that franchising authorities may secure the provision of services in furtherance of their duty at section 30(1) only by making a direct award of a public service contract to a public sector company. On that basis, the Bill does not contain any provisions, or make any amendments to the 1993 Act, which would enable the Scottish Ministers to award contracts for the provision of services to private operators.

Appropriate designating authorities, like the Scottish Ministers, have a power in section 24 of the 1993 Act to grant exemption from designation under section 23(1) of the 1993 Act (which, when the Bill comes into force, will mean designation as services which ought to be provided under section 30) in respect of such services as they may specify. The Bill makes only consequential amendments to section 24 to remove references to franchising where appropriate.

The Bill will not make any changes to provisions of the 1993 Act which may be relevant to arrangements for open access operators.

Finally, I would also like to inform you and the Committee that the Secretary of State for Transport, Louise Haigh, has written to me formally confirming that the UK Government now accepts the Scottish Government's position that the whole of the Bill engages the legislative consent process (as is noted in the Legislative Consent Memorandum, the UK Government had previously held the view that clause 2(3) of the Bill did not).

Can this letter be shared with all Committee members as well as Graeme Simpson MSP who attended committee on the day.

Yours sincerely

**FIONA HYSLOP**  
**Cabinet Secretary for Transport**