

Scotland Bill

RMT Union

Introduction

The RMT is the UK and Scotland's largest rail union and the only union to represent all grades of rail workers.

We would wish to bring to the Committee concerns we have in respect of the following two issues.

- **Scotland's powers over rail**
- **Future of the British Transport Police**

We shall deal with each in turn.

Scotland's powers over rail - background

The Smith commission wording in respect of rail was follows,

*"The power will be devolved to the Scottish Government to allow public sector operators to **bid** (our emphasis) for rail franchises funded and specified by Scottish Ministers"*

Rail franchises funded and specified by Scottish Ministers are the Scotrail Franchise and Caledonian Sleeper Franchise.

The UK government explanation for the subsequent Scotland Bill clause stated that,

"Currently, public sector operators are precluded from bidding and operating rail franchises in Great Britain (GB). The clause will lift this existing prohibition with regards to passenger rail services that both start and end in Scotland and certain cross border services where Scottish Ministers are the 'appropriate franchising authority'."

Scottish Ministers already have an extensive range of executive functions related to franchising of passenger services in Scotland. Devolved executive functions empower the Scottish Ministers to procure, let, manage and enforce Scottish franchise agreements with regards to Scotland-only services and certain cross border services. This clause will unlock such existing executive functions that the Scottish Ministers have as "appropriate franchising authority" and "appropriate designating authority" to allow public sector operators to become franchisees in respect of for Scotland-only services."

Key Points

The proposals in the Scotland Bill state that

49 Rail: franchising of passenger services (1) Section 25 of the Railways Act 1993 (public sector operators not to be franchisees) is amended as follows. (2) In the heading, at the beginning insert "England and Wales:". (3) After subsection (2) insert— "(2A) Subsection (1) does not prevent a public sector operator from being a franchisee in relation to a Scottish franchise agreement." (4) This section does not

have effect in relation to any invitation to tender under section 26(2) of the Railways Act 1993 issued before the day on which this section comes into force.

This is unacceptable and we believe against the spirit of the Smith commission as it will require the Scottish Government to put rail services out to tender whether they wish to or not.

Instead the final legislation should ensure that “**bid**” means that the Scottish Government can make an assessment of whether or not it wishes to run rail services it is responsible for in the public or private sector. That assessment could for example take the form of an internal modeling of a public option bidding against a private option. The key issue is that the Government should no longer be required to put out to tender rail services it has responsibility for. That is say that “bid” should not mean there has to be tendering process.

This is not about whether a service should be in the public or private sector. It is about the Scottish Government being able to decide whether or not it wishes to tender rail services it is responsible for. There should be full legislative competence on this issue to the Scottish Parliament along with that of the associated executive competence to the Scottish Government.

The Scottish government is not required to tender health and education services so it is patently unreasonable and inconsistent for it to be required to tender its rail services.

It is also worth noting that in the controversy surrounding the future of Calmac ferry services Scottish Ministers have complained that they have no option but to put the ferry services out to tender because of European Union directives and would prefer not to have to do so. Just as EU legislation should not require the tendering of Scottish ferries services, UK legislation should not require the tendering of Scottish rail services.

The approach set out in this submission would remain consistent with the relevant key principles underpinning the Smith commission, namely

- not cause detriment to the UK as a whole nor to any of its constituent parts.
- cause neither the UK Government nor the Scottish Government to gain or lose financially simply as a consequence of devolving a specific power.
- be implementable; be compatible with Scotland’s and the UK’s international obligations, including EU law; and be agreed with a broad understanding of the potential associated costs.

We would also add that support for our position on this issue was forthcoming from Labour, the Greens and SNP when this issue was voted on as part of the debate around the 2012 Scotland Act.

We also attach correspondence between the Scottish Government and rail unions and STUC / TUC in which the Scottish Government is supportive of the rail union / STUC position/ TUC.

Finally we should make comment on the reference in the Scottish Governments letter to the European Union's fourth railway package proposals which amongst other measures *may* require member states to tender their rails services. This is a somewhat of a "Red Herring" as the fourth rail package is only in draft form and there is strong resistance from many member states and the European Parliament to this proposal. Something that has not and indeed may not become EU Law in the future should not be determining current UK / Scottish Government legislation.

We hope the Committee will support the view that it should be a matter for the Scottish Government to decide whether it wishes tender rail services it is responsible for funding and that the Scotland Bill should be amended accordingly.

Future of the British Transport Police – Background

We also think it is important to highlight where we believe the spirit of the Smith Commission is not being adhered to in respect of the British Transport Police.

The Smith Commission said

"The functions of the British Transport Police in Scotland will be a devolved matter."

It did not say that the BTP would be absorbed into Police Scotland as it currently being proposed by the Scottish Government.

There is therefore a case for the Scotland Bill to be amended to protect the role of the BTP police to protect the integrity of the Smith Commission agreement on this matter.

It should be noted that there is no evidence base that absorbing the BTP into Police Scotland will improve the safety and security of rail passengers and workers. Indeed the contrary is the case as previously the UK government has had extensive consultation on absorbing the BTP police into existing police forces and the issue was also the subject of an extensive Westminster parliamentary transport committee which found there was no case to abolish a specialist transport police force.

The RMT fully supports the following motion that was passed at this year's STUC which we hope the committee will also be able to reflect in its recommendations.

"Congress notes that the Smith Commission recommended devolving responsibility in Scotland for the British Transport Police (BTP) to the Scottish Parliament but made no reference about the absorption of the BTP into Police Scotland.

Congress is dismayed at the announcement by the Scottish Government on 10th March 2015 that the specialist British Transport Police is to be absorbed into Police Scotland and this announcement has been made without any public consultation.

Congress is opposed to this decision as the move would mean the British Transport Police will no longer operate as a separate force in Scotland losing the specialist skills and identity that have been built up over many years.

Congress further notes that the BTP themselves have made it clear that they wanted to continue providing this service, with oversight by Holyrood instead of Westminster, but the Scottish Government have ignored that specialist advice.

Congress is concerned that the skills and expertise in dealing with specialist policing needs on the railways will be lost, meaning an inferior policing service which will adversely impact on the safety and security of rail workers and passengers.

Congress also notes that the principle of merging the transport police into a single police force has previously been subject to a full parliamentary inquiry by the Westminster Transport Select Committee who opposed such a move.

Congress agrees to support the campaign of the rail affiliates on this issue and calls on the Scottish Government to reverse this decision and not to make any further proposals without a full public consultation.”

Appendix

Sent to transport and constitutional / Scotland ministers /spokespeople for all five parties

Dear

Smith Commission: Devolved rail powers

We are writing to seek your clarification on the above matter. The Smith commission wording is as follows,

“The power will be devolved to the Scottish Government to allow public sector operators to bid for rail franchises funded and specified by Scottish Ministers”

We would be grateful for your confirmation that the draft legislation to give effect to this wording will allow the Scottish Government to make an assessment of whether or not it wishes to run rail services it is responsible for in the public sector, to allow rail services it is responsible for to be run in the public sector and also that *it will no longer be required to put out to tender rail services it has responsibility for.*

We hope you would agree that the spirit of the Smith Commission wording is that it should be for the Scottish Government to decide whether or not it should tender rail services it is responsible for and that there should be full legislative competence to the Scottish Parliament along with that of the associated executive competence to the Scottish Government.

Such an approach would also be consistent with the relevant key principles underpinning the Smith commission, namely

- not cause detriment to the UK as a whole nor to any of its constituent parts.
- cause neither the UK Government nor the Scottish Government to gain or lose financially simply as a consequence of devolving a specific power.
- be implementable; be compatible with Scotland's and the UK's international obligations, including EU law; and be agreed with a broad understanding of the potential associated costs.

We have written similar letters to the other four parties and we would be grateful to receive your response on this issue at the earliest opportunity.

Yours sincerely

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Derek Mackay MSP

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Frances O'Grady, Grahame Smith, Mick Whelan
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Our ref: 2015/0006519

28 February 2015

Dear Office Bearers,

Thank you for your joint letter of 19 December regarding devolved rail powers, which follows on from the final report of the Smith Commission and the subsequent publication of the UK Government's Command Paper.

As you will be aware, our submission to the Smith Commission went much further than the UK parties in seeking full responsibility within rail transport, which would enable public sector and not-for-profit models, more integrated railway services and services designed to meet local needs. The Labour Party for example, sought powers to facilitate the consideration of a not for profit model only, an option which is already available under current UK railways legislation.

As you reflect in your letter, paragraph 65 of the final Smith Commission report concluded that *'the power will be devolved to the Scottish Government to allow public sector operators to bid for rail franchises funded and specified by Scottish Ministers'*. In response to this, the Command Paper outlined proposals to bring this into effect by an amendment to the Railways Act 1993, specifically Section 25.

While we would have wanted the Smith Commission conclusions to go much further and devolve full rail powers to the Scottish Parliament, as a consequence of the proposed change, which we pressed hard to achieve, we will in future be able to consider appointing a UK public sector body to run Scottish rail passenger services, including a body which has been set up by the Scottish Government.

Under the current UK legislation, there are some circumstances where a contract to deliver public rail services can be made without the need to issue an invitation to tender (direct award). However, it is my strongly held view that, as far as European law permits, we should have the full range of options available to us to award such contracts in the way that best meets the needs and interests of the passenger, the rail workforce, the tax payer and the broader Scottish economy. This includes a direct award to a body which had been set up by the Scottish Government for the purposes of delivering rail services.

My officials are fully engaged with UK Department for Transport on this matter in the context of the Smith Commission proposals and the subsequent Command Paper.

It is also important to note that the European Commission is currently examining the rules on direct awards under the terms of their Fourth Railway Package proposals. Their initial view has been that, in order to open the domestic rail market, all public service contracts for rail, with the exception of very small rail networks, should be subject to competitive tendering.

My colleague Keith Brown has recently written to the UK Transport Secretary requesting that the UK Government as the Member State press the Commission for flexibility in the EU rules on direct awards in order to accommodate local circumstances and priorities.

I hope this response is helpful.

Kind regards

A handwritten signature in black ink, appearing to read 'Derek Mackay', written in a cursive style.

DEREK MACKAY