

Transport Committee

Oral evidence: [Scrutiny of the draft Rail Reform Bill, HC 584](#)

Wednesday 22 May 2024

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Members present: Iain Stewart (Chair); Jack Brereton; Sara Britcliffe; Fabian Hamilton; Paul Howell; Karl McCartney; Grahame Morris; Gavin Newlands.

Questions 275–287

Witnesses

[I](#): Fiona Hyslop MSP, Cabinet Secretary for Transport, Scottish Government.

Written evidence from witnesses:

- [The Scottish Government](#)



Examination of witness

Witness: Fiona Hyslop.

Q275 **Chair:** Welcome to today's session of the Transport Committee, where we conclude our pre-legislative scrutiny of the draft Rail Reform Bill. For our first panel today, we are joined virtually from Edinburgh. Before I begin my questions, Minister, I invite you to state your name and position.

Fiona Hyslop: Good morning. I am Fiona Hyslop, the Cabinet Secretary for Transport in the Scottish Government. I am speaking to you from Transport Scotland in Glasgow. It is lovely to be with you.

Q276 **Chair:** You are in Glasgow, not Edinburgh; marvellous. You are very welcome, and we are grateful for your time and evidence this morning. Before we get into more detailed questions, could you briefly outline how the railways in Scotland currently sit in the national framework and what powers you don't have that you seek?

Fiona Hyslop: The current position in Scotland is that we have executive devolution in relation to certain rail matters, and that has been the case since the Railways Act 2005, but we still have to operate within the constraints of the GB industry structure and the prevailing UK legislation, which is clearly reserved.

We have powers to set a strategy for the exercise of our functions in relation to railways and railway services, to specify outputs that help support the delivery of that strategy, and to provide funding. For CP7, that is £4.2 billion, which is a significant amount of our budget. Since 2016, Scottish Ministers can invite tenders for all rail passenger franchises from public sector bidders. We exercise those rail functions through our national transport strategy. We have a rail decarbonisation action plan and a rail freight strategy, including separate freight growth strategies. We support the infrastructure for ScotRail and Caledonian Sleeper, both now under public control, through our ownership via the operator of last resort arrangements. We are currently engaging constructively with the Department for Transport on cross-border services and with the freight sector. We operate with an agreement, the ScotRail Alliance, which is a "Team Scotland" approach.

In terms of progress, we already have a very good integrated track and train arrangement through those agreements between Network Rail and ScotRail, managed through the ScotRail Alliance and our agreements. That is a good system. We do it despite the current arrangements. In fact, we have been pretty creative, given those constraints, but what we really want is devolution of our rail services to enable the integration of track and train, which everybody sees as desirable. We put that work into the rail review, but, unfortunately, that devolution approach has not been replicated in the draft Bill you are looking at.



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I hope, Chair, that that gives you some kind of outline.

Q277 **Chair:** That is very helpful, thank you. In its current form, what does the Bill change in your current situation?

Fiona Hyslop: It will complicate things. It will make things more difficult for us and more remote, and take away—in fact, damage—the devolution that we currently have in what has been provided. What you see in front of you is a draft Bill that will deliver for England. It is a more integrated aligned railway, bringing together responsibilities for track and train in a single body, which is a step forward for the industry there. However, what we face with the Bill is the prospect of unnecessary and inefficient complication of Scotland’s railway with a new body. It will be more distant from Scottish Ministers; there will be no statutory responsibilities.

The Bill as it stands would mean that the new body would have responsibility for track and cross-border services only. Private companies would continue to operate freight services and Scottish Ministers would remain responsible for setting the strategy in Scotland—as I said, the funding is quite considerable—and providing passenger services. But the draft Bill only allows for greater integration in Scotland if Scottish Ministers delegate or give away our rail franchising functions to the IRB. That body would not be directly accountable to the Scottish Parliament or the taxpayer. Scottish Ministers would have very little control over it and in particular no statutory powers to direct or influence. That is where your Committee comes in, with your scrutiny and recommendations as to what might make it a better position.

Q278 **Chair:** Thank you. My colleagues will want to pick up on some of those points in a moment. To conclude my questions for now, what engagement did you have with the Department for Transport before the Bill was published in its current form? Did you put forward alternative suggestions that were rejected or just not acknowledged? What was the engagement pre-publication of the Bill?

Fiona Hyslop: We submitted evidence to the Williams-Shapps review. We set out clearly our preferred option of devolution. In terms of co-operation, as I think I said, our officials in Transport Scotland have regular dialogue with the Department for Transport. I understand you are about to hear evidence from your Minister, Huw Merriman. I met him to discuss this issue only a few weeks ago. We have had good engagement, but, as sometimes happens with devolution, Whitehall and the decisions that are made, as you might appreciate, we have not had evidence of results. We have had little result from good engagement.

Q279 **Gavin Newlands:** Good morning, Cabinet Secretary. It is good to see you in Glasgow because, as you know, west is best. As you may have seen, we heard from the Welsh Government yesterday, who made similar arguments about the complication and lack of accountability that the Bill may place upon the current arrangements with regard to the Scottish and Welsh Governments. Clearly, from both a Scottish and Welsh perspective,



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both you and the Welsh Government have argued that further devolution, or I should say, full devolution of rail services is obviously the optimal solution for both the Scottish and Welsh Governments. To stray back to the current Bill, short of full devolution, how do you think the Bill could be amended to better enable both devolved Governments to have accountability with regard to service users and infrastructure in Scotland?

Fiona Hyslop: Thank you for that question. We reflected on the evidence from the Welsh Government, and there are similar issues, but, clearly, we already have some degree of devolution in Scotland, so our system is different from the Welsh. In an atmosphere of trying to be constructive and help the Committee provide solutions to what is an irony, where the situation is that we want to see integrated track and train but the proposals for the UK are counterproductive and a step backwards for Scotland, we need to find ways to improve that.

If the Chair is happy for me to go through them, there are probably three amendments that could help the situation, however limited they might be, reflecting that I think full devolution is more desirable. Bear in mind that, certainly from my discussions with Network Rail, I think the UK Government—you might want to ask them—want to import into the English system the example and experience of Scotland, because we have been successful. Even as of this morning, our performance rate is 95% and in England it is 91%. We have successes that want to be replicated elsewhere, but there is a danger that you throw the baby out with the bath water with this draft Bill, in terms of Scotland. It is quite telling that the UK Government has seconded Alex Hynes, who was the managing director of Scotland's Railway until fairly recently, into the Department for Transport to help the UK Government guide their way forward for GB Rail.

To improve the Bill, we should provide Scottish Ministers with the power to issue direction or guidance to the IRB in relation to activities that Scottish Ministers have responsibility to fund. I would also seek a provision requiring the Secretary of State to consult Scottish Ministers prior to the Secretary of State issuing any direction or guidance. That would provide greater accountability to Scottish Ministers, which is in the current Bill, but also ensure that Scottish Ministers were consulted. As you will remember, we anticipated that we would be the primary funder of the IRB in Scotland, so I think that that is a reasonable request.

The second helpful change would be to amend the provision that will give Scottish Ministers the power to enter into an agreement with the IRB for the IRB to exercise on Ministers' behalf any of their "relevant franchising functions", so that the Secretary of State's permission is not required to revoke any such agreement. This is a key aspect and one that the Welsh Government had quite strong views about when they gave you evidence. Without this change, the risk would remain that our current devolved responsibilities to provide passenger services would not be returned, depending on the Secretary of State's view at the time. That agreement



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to transfer franchising functions to the IRB looks to us like a one-way street, and that is a problem.

My third suggestion for improvement—I am sure that when the Bill is finally published there will be others as well—is pertinent to how we should do business between two Governments to ensure that we have co-operation. These might be reflections that the Committee has already had. We should amend the Secretary of State's power to amend Acts of the Scottish Parliament by regulations, in consequence of the provision made in the Bill—the Henry VIII power—so that the consent of Scottish Ministers would be required. Bearing in mind that it is convention, as you will all know, that the UK Parliament does not normally legislate in devolved areas without the consent of the Scottish Parliament, that does not apply to secondary legislation. A lot of the powers in the Bill will come through secondary legislation, so a Scottish consent requirement seems appropriate.

I am still absolutely firm that our preferred route is full devolution of these powers but, short of that, we have provided some evidence and suggestions to help the Committee in its deliberations to make sure that devolution is not damaged by this Bill, which is, actually, not what the current UK Government—or whatever form the new UK Government will take—would want to do.

Q280 Gavin Newlands: I will circle back to full devolution in a moment, Cabinet Secretary. You have just brought up the issue of delegated franchising functions. You have given a solution to make the Bill better than it is currently drafted, but is that power to delegate actually desired by the Scottish Government?

Fiona Hyslop: We would not need or want it. We would prefer to have our own powers to make our own franchising decisions. That is what was given to the Scottish Parliament back in 2005, and it was operated at the time by the Scottish Executive, which was formed by a Labour-Liberal Democrat coalition. Without making sure that we have our own powers to make our own decisions, we would be going backwards. Our preferred option would be for us to be able to make straightforward decisions about taking public control and public ownership of our railways.

We have demonstrated in Scotland that we can have good co-operation between track and train and that we can get good value for money for our investments. We have electrification, with 76% of journeys in Scotland now on electric train, and in terms of our improvements, we are building and securing. We have worked on 16 stations since we came into power, and—I can't leave this evidence session without saying it—next week we will see the official opening of the Levenmouth rail link, which restores rail that has been closed for 50 years. It opens up an area of Fife for jobs and employment and it will tackle lots of issues.

We do not want that diminished in any way, and that is why we want to have the powers to do this in a straightforward way. The straightforward



powers of devolution would allow us to do that. Obviously, we would continue to need co-operation. We recognise the important role of the safety regulations. Indeed, I had a meeting just yesterday with the board of the ORR. We are acutely aware of collective responsibilities and cross-border freight issues, but if we want to continue to put the passenger first, and put our economy and industry first, we need to make sure that the powers and the legal context support that, so it makes common sense that devolution of those powers is the optimum solution.

Short of that, the Committee will need to wrestle with a Bill that has yet to be presented formally. I hope that you will draw on some of the best practice that we have seen in Scotland to help inform what good looks like. We know that the UK Government want to replicate what they see in Scotland. There is always room for improvement, but Scotland is in a strong place, and we would like to share our experience. A lot of the different parts of the UK want to learn about Scotland, and we are happy to share that experience with them.

Q281 Gavin Newlands: Indeed. You mentioned Levenmouth. I happened to pass through the new Motherwell station on Saturday on my way to an even better football game. That station is a fairly significant achievement as well. You alluded to this: as it is currently drafted in the Bill, is the delegation function compatible with the devolution settlement as it is?

Fiona Hyslop: Currently, no.

Q282 Gavin Newlands: A fairly straightforward answer. In one of your amendments you suggested a way forward, but how would the relationship between the Scottish Government, the IRB and the Secretary of State for Transport down here need to be structured to be workable, moving forward?

Fiona Hyslop: The problem with the Bill just now is that it gives a great deal of power to the IRB, which is not statutorily accountable to the Scottish Government. That is why one of the amendments is to make sure that it has a statutory responsibility to Scottish Ministers for the services that we provide. Remember, for the next period that amounts to £4.2 billion; this year it is £1.6 billion. We need to have that statutory responsibility to us. Currently, the logic of the Bill is that there is one accountability, which is to the Secretary of State for Transport. Even with the best will in the world, however good the Secretary of State for Transport is, in whatever Government, they will not be on top of the issues in Scotland that are operating in a devolved space. I wouldn't expect them to be. The idea that the statutory relationship is solely with the Secretary of State for Transport is the fundamental weakness in the draft Bill.

Q283 Gavin Newlands: Okay. I come to my final question. You made the point that the proposals are essentially mirrored on Scotland's journey thus far. In many ways, it is almost completing that journey for the English rail network. I speak to people in industry in Scotland and, since



the franchises have come back under public control, there has been a change in ethos and approach with regard to how the services are delivered—a renewed purpose, as it were, that does not just focus on the train service itself but looks at it in a more holistic, public policy objective setting. How might this impact that approach?

Fiona Hyslop: It weakens it. It makes it more disparate, rather than integrated. You touched on the importance of a whole-industry approach, and that is not just Network Rail and ScotRail currently working together; it is about the whole industry working together. It will be an important point—I am not sure if you will be raising competition; I have a view on that as well. We also want to have multimodal integrated transport systems, not just rail systems. You talked about Motherwell station. Part of the major investment to Motherwell station was to align the bus and active travel with rail. It was the same at Levenmouth.

We need to make sure that we have a more integrated transport system as a whole, so the more remote and distant the IRB from the operation of transport in Scotland, the more difficult that becomes. That is a challenge. We need to think of our transport systems not just as modes to get passengers from A to B; they can be absolutely instrumental in economic activity, tackling poverty by helping to support jobs. I know that because one of the major investments in Scotland was the Airdrie–Bathgate line, linking a second line between Glasgow and Edinburgh, which was highly successful.

You talked about ethos. We chose to take into public control our rail provision. It has led to 400 more staff in our railway services since we took over, and currently there is no industrial action in Scotland, which is a stark difference from what you are experiencing in England. We clearly need to recognise the cross-border rail issues that affect Scotland, but there is a different ethos. Everybody is pulling together in the same direction. It would be a retrograde step for the Bill to go through as it is currently drafted, and we look to your Committee to provide your collective wisdom as to how that might be addressed.

Gavin Newlands: With that pressure, thank you.

Q284 **Karl McCartney:** Cabinet Secretary, I hear your message about wanting complete devolution for Scotland. Obviously, there are cross-border services already, such as LNER going up the east coast. I represent Lincoln, which gets some of those services. If you had full devolution, would you not see that the Secretary of State for Transport in England would want better services for English passengers and, therefore, might not direct services from London to Scotland terminate at Edinburgh and come back down, increasing capacity for English passengers? What would happen for Scottish passengers at that point?

Fiona Hyslop: I cannot imagine any Secretary of State for Transport in the UK wanting to cause such difficulties. Indeed, under the current operation, we have to work collectively with the UK Government. If you



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take freight, for example, of course we have to have co-operation for Scottish goods getting to the continent via rail. Currently, we try to do that, but there are some issues. Not to stray into the problems of HS2, but in consequence of that, how do we ensure that we have the freight provisions that we need?

That happens under existing arrangements, let alone under the new arrangements, so I think your criticisms and concerns could equally apply to the situation under the current Transport Minister. One of our challenges is about electrification provision in the north of England slowing down our trains and slowing down delivery. Again, I have already had discussions with your Transport Ministers about how we might try to improve that, which is really important. That co-operation would still need to exist, whatever form or shape we have, whether it is the current situation or a new one, so I am not sure about the premise of your question.

I note that you are from Lincoln. As we are in the Thatcher Room, I point out that I was educated in Grantham, so I am acutely aware of some of the issues facing that part of the country as well.

Q285 Karl McCartney: Thank you for your answer. I am conscious that there are passengers in England and passengers in Scotland, and I heard the message that we have to put passengers first. It is just that neither side should want to put their passengers above the others.

Fiona Hyslop: Perhaps I will put it back to you. I know you have heard criticism that the IRB might give preferential treatment to TOCs or services that are within the direct power of the Secretary of State, at the expense of others. I am sure that you will want to explore that tension further as well.

Karl McCartney: Thank you.

Q286 Chair: As a supplementary to Karl's question, in the amendments that you proposed, would there be a difference between services that operate wholly within Scotland and the cross-border ones, particularly when it comes to investment? For example, if there was a proposal to upgrade the signalling on the west coast main line in Cumbria and Lancashire, that spending would be wholly within England but, hopefully, also of benefit to the cross-border services on the west coast main line. In the amendments you propose, would you want to differentiate between services wholly operating within Scotland and the cross-border ones?

Fiona Hyslop: There need to be sensible arrangements for agreements. Currently, we have a memorandum of understanding with the Department for Transport. There is a framework agreement, as you know, between the Secretary of State, the Department for Transport and Network Rail. There are provisions within that framework agreement for co-operation between Scotland and Network Rail. You will remember that we have submitted the high-level specifications for our railway system for



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CP7, and a lot of that is what our expectations are. There will be differences. We haven't mentioned climate change. Scotland is suffering more from—dare I say it?—wet weather. That is not a great advert for Scotland; it has been glorious so far in May, but we have had storms and waterlogging. There is an acute issue for us in relation to that.

The cross-border issue is not just for the new arrangements; it is what we need to do now. Scotland is already investing—I will correct the record if I am wrong—in feeder stations in Portobello and other parts of Scotland, precisely to help support cross-border rail. We need to get the UK Government, under the current system, to do similar investments to help us. That is one of the concerns I hear from the rail industry. It has to go slowly through parts of the north of England, which is not good for freight or rail in England, and it is not good for freight or rail passengers in Scotland either.

Whatever arrangement you have, you will still have those issues. Under full devolution, it would be far more formalised. Indeed, I know from the 17 years of different experience I have had in the Scottish Government that when we are working with the UK Government, it is easier to work on things that are clearly devolved and reserved. It is the grey areas that cause issues. Unfortunately, as it is currently drafted, this Bill is definitely in a very grey and murky area. I am sure that your Committee will shine some light on it when you finally report.

Q287 Chair: Thank you, that is very helpful. We are coming to the end of our session, so I will give you the opportunity to put on the record any other points that you have not already covered this morning or in your written evidence.

Fiona Hyslop: The Bill is not yet published, so we need to see what the formal position is when it is finally published. I think there will be serious issues around legislative consent. We already have a difference of opinion with the UK Government about what would require that. I will follow that up in writing to identify the current areas we would have concerns with.

Because I was deputy convenor on our own Transport Committee, I know that it would be really helpful to get all this sorted right up front, so that we do not have delays in legislative memorandums and so on between two Governments. We can provide information about successes. Something very serious is that, depending on the shape of the UK Government coming in, there needs to be an option in the Bill to allow Scotland to have the option to retain public control of ScotRail, because it is successful, it is supporting our industries and our passengers, and we are demonstrating that it can be a success.

Chair: Thank you. The purpose of our inquiry is to try to identify and resolve any difficulties in the draft Bill before it gets presented to Parliament as a formal Bill. Thank you very much indeed for your time and evidence this morning.



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Fiona Hyslop: Thank you very much, Chair.

Chair: Thank you.