

PASSENGER RAILWAY SERVICES (PUBLIC OWNERSHIP) BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- These Explanatory Notes relate to the Lords Amendments to the Passenger Railway Services (Public Ownership) Bill 2024 (Bill 133) as brought from the House of Lords on 14 November 2024.
- These Explanatory Notes have been prepared by the Department for Transport in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes, like the Lords Amendments themselves, refer to HL Bill 21, the Bill as first printed for the introduction in the Lords.
- These Explanatory Notes might best be read alongside the Lords Amendments and the text of the Bill. They are not, and are not intended to be, a comprehensive description of the Lords Amendments.
- Lords Amendment 1 was tabled by Lord Gascoigne and was opposed by the Government.
- Lords Amendment 2 was tabled by Lord Moylan and was opposed by the Government.
- Lords Amendment 3 was tabled in the name of the Minister.
- In the following Commentary, an asterisk(*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords Amendments

Lords Amendment before Clause 1: Purpose

Lords Amendment 1*

- 1 Lords Amendment 1 would add a purpose to the Bill to which the Secretary of State must have regard when taking any actions under the provisions of the Bill. The purpose of the Bill as drafted by Lords Amendment 1 is to improve the performance of passenger railway services in the United Kingdom.
- 2 The effect of this amendment would be to require the Secretary of State to have regard to that purpose when, for example, awarding public sector contracts to public sector companies under section 30 or extending or entering into temporary franchise agreements under section 30A of the Railways Act 1993.

Lords Amendment to Clause 1: Termination of existing franchise agreements

Lords Amendment 2*

- 3 Lords Amendment 2 inserts a new section 25B to the Railways Act 1993. The effect of this section is that, firstly, it would require the Secretary of State to terminate franchise agreements for default in accordance with the terms of the agreement as soon as it is possible to do so.
- 4 Secondly, the new section 25B would require the Secretary of State to assess and rank existing franchise agreements according to performance criteria established after consultation with relevant stakeholders. Lords Amendment 2 does not provide detail on the kind of consultation that must be undertaken, which stakeholders ought to be engaged and how much weight must be afforded to stakeholder views when establishing the performance criteria. These decisions would be left to the discretion of the Secretary of State.
- 5 Thirdly, the new section 25B would enable the Secretary of State to terminate a franchise agreement pursuant to a break clause (defined as a provision in a franchise agreement enabling the Secretary of State to terminate the agreement before the end of the term by notice without reason), only if two conditions are met. The first is if there are no other franchise agreements which are performing worse under the criteria, and the second is if the Secretary of State is satisfied that provision of the services by a public sector company will improve existing service provision.

Lords Amendment after Clause 2: Application of Public Sector Equality Duty

Lords Amendment 3

- 6 Lords Amendment 3 would amend Part 1 of Schedule 19 to the Equality Act 2010. It would insert in the definition of public authority, a public sector company providing rail passenger services under a public sector contract awarded under section 30 of the Railways Act 1993.

- 7 Public authorities are subject to requirements in the Equality Act 2010, including the public sector equality duty in section 149. This duty requires public authorities, in the exercise of their functions, to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act, (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics include age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 8 Although it is the Government's view that the public sector equality duty already applies to publicly owned train operating companies, the effect of Lords Amendment 3 is that it makes the application as clear as possible.

Financial Effects of Lords Amendments

- 9 Before the insertion of a new section 25B into Clause 1(2) via Lords Amendment 2, the intention was that train operations would be brought back into public ownership as current franchise agreements end. Transitioning the provision of services to the public sector in this way would avoid the need to pay compensation to operators in order to secure their agreement to early termination of their franchise agreements.
- 10 Transferring service operations to the public sector will result in a saving of fixed and performance-based management fees currently paid to private sector train operators. This saving is estimated to be £110m-£150m per annum once all franchised contracts had expired, with a proportion of these savings achieved each year in the interim as individual services transfer.
- 11 However, Lords Amendment 2 requires the poorest performing operators' services to be brought into public ownership first in accordance with section 25B. This means that the transfer of better-performing operators' services would need to be deferred until either the conditions in section 25B(3) are met or the relevant contract has run its maximum term. In turn, this would delay the implementation of public ownership, including the achievement of anticipated fee savings. The scale of the financial impact would depend upon the relative performance ranking established under section 25B(2), because this ranking determines which operators' contracts can be ended when. In the Government's view, the financial impact on the public purse would be likely to be in the tens of millions of pounds in fixed and performance-based management fees that could otherwise have been avoided.
- 12 Any financial impact arising from Lords Amendments 1 and 3 is expected to be negligible.

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