Welsh Parliament
Legislation Committee

The Welsh Government's Legislative Consent Memorandum on the Railways Bill

October 2026

1. Background

The UK Government's Railways Bill

1. The Bill was first introduced into the House of Commons on 5 November 2025, and had its first reading the same day. The Bill did not complete its journey through the UK Parliament before the end of the 2024-26 parliamentary session. The Bill was reintroduced for Session 2026-27 on 14 May 2026, following the King's speech, and was brought from the House of Commons to the House of Lords on 11 June 2026.[1]

2. It is sponsored by the Department for Transport.

3. The long title of the Bill states that it is "A Bill to make provision about railways and railway services; and for connected purposes." According to the Bill's Explanatory Notes, the Bill:

> *"... will fundamentally alter the rail landscape in Great Britain. It includes provisions on a wide range of railway related topics."*[2]

4. Consideration of the Bill (as re-introduced) by the House of Lords began on 11 June 2026. The Bill is currently at Committee stage in the House of Lords.

The legislative consent process

5. Standing Orders 29.1 and 29.2 provide that the Welsh Government should lay a legislative consent memorandum when a UK Bill makes provision in relation to Wales that has regard to devolved matters (relevant provision). The memorandum should normally be laid no later than 2 weeks after:

- a Bill that makes relevant provision is introduced into the UK Parliament; or
- any amendment(s) is/are agreed that make relevant provision that goes beyond the limits of any consent previously given by the Senedd; or
- any amendment(s) is/are tabled by a Minister of the Crown (or with the Minister of the Crown's support) that would make relevant

[1] **Railways Bill** (HL Bill 25)
[2] Railways Bill (HL Bill 25), **Explanatory Notes**, paragraph 2

provision that goes beyond the limits of any consent previously given by the Senedd.[3]

Legislative consent activity during the Sixth Senedd

6. During the Sixth Senedd, the then Welsh Government laid a Legislative Consent Memorandum[4] (the original Memorandum) on the Bill as introduced on 21 January 2026. A Supplementary Legislative Consent Memorandum was laid on 2 February 2026.[5] A further Supplementary Legislative Consent Memorandum was laid by Welsh Government on 16 March 2026.[6]

7. The Sixth Senedd's Legislation, Justice and Constitution Committee laid its report covering those three original memoranda on 27 March 2026.[7] The then Welsh Government did not respond to that report.

8. A legislative consent motion was not tabled prior to the dissolution of the Senedd on 8 April 2026 and so no vote on the relevant provisions in the Bill took place in the Sixth Senedd.

9. The Bill was subject to a carry-over motion to the next session of the UK Parliament.

2. The Welsh Government's Legislative Consent Memorandum

10. On 9 July 2026, Mark Hooper MS, the Deputy Minister for Transport (the Deputy Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill, as brought forward from the House of Commons to the House of Lords on 11 June 2026.[8]

[3] Welsh Parliament, **Standing Orders**, April 2026
[4] Welsh Government, **Legislative Consent Memorandum on the Railways Bill** (as originally introduced)
[5] Welsh Government, **Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Railways Bill** (as originally introduced)
[6] Welsh Government, **Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Railways Bill** (as originally introduced)
[7] Legislation, Justice and Constitution Committee, **Report on the Welsh Government's Legislative Consent Memorandum on the Railways Bill**, March 2026
[8] Welsh Government, **Legislative Consent Memorandum on the Railways Bill,** July 2026

11. On 14 July 2026, the Business Committee agreed that the Legislation Committee (the Committee) and the Economy, Energy and Connectivity Committee should report to the Senedd by 6 November 2026.[9]

Provision for which the Senedd's consent is sought

12. In paragraph 10 of the Memorandum, the Deputy Minister specifies the following clauses of the Bill as requiring consent:

> **Designation and status**: clause 2 (crown status)
>
> **Functions**: clauses 3 (functions) and 4 (exercise of functions of Scottish and Welsh Ministers)
>
> **Directions and guidance**: clauses 7 (directions by Secretary of State) and 9 (guidance by Secretary of State)
>
> **Licensing**: clause 11 (licensing), including Schedule 1
>
> **Financial arrangements etc**: clause 12 (funding), including Part 1 of Schedule 2
>
> **Strategies and target**: clauses 15 to 17 (rail strategy; duty of GBR and ORR to have regard to strategies etc; rail freight target)
>
> **Duties**: clauses 18 to 21 (general duties of Ministers, GBR and ORR; safety duty of Ministers and ORR; competition duty of ORR; duty of ORR to have regard to Secretary of State's guidance)
>
> **Scotland and Wales**: clause 24 (Memorandum of Understanding: Secretary of State and Welsh Ministers)
>
> **Designation and exemption of services**: clause 25 (designation of services by Secretary of State) and clauses 27 to 30 (designation of services by Welsh Ministers; exemption from designation: power of Secretary of State; exemption from designation: powers of Scottish and Welsh Ministers; exemption from designation: supplementary)

[9] Business Committee, **Revised timetable for consideration: Legislative Consent Memorandum on the Railways Bill,** October 2026

Provision of services: clauses 31 and 32 (provision of railway passenger services; contracts awarded under section 31: supplementary)

Fares: clauses 33 to 34 (fares; discount fare schemes)

Interpretation: clause 35 (interpretation of Chapter 1 of Part 2)

The Passengers' Council – general: clauses 36 and 37 (general duties of the Council; keeping matters under review and collecting information)

Investigations: clauses 39, 40, 42 and 43 (investigations; power to obtain information; representations and referrals; reports)

Complaints and dispute resolution: clause 45 (dispute resolution)

Standards and improvement plans: clauses 46 and 47 (standards; improvement plans)

Other functions: clause 48 (advice about railway passenger services and station services)

Miscellaneous: clauses 51 and 52 (power to make exclusions; interpretation of Chapter 2 of Part 2)

Access to and use of GBR infrastructure: clauses 59 to 68 (access and use policy; infrastructure capacity plan; the working timetable; preparation of working timetable; capacity duty; charging scheme; performance scheme; consultation; appeals against access, charging and performance decisions; appeal procedure)

Access agreement and rights: clauses 69 to 71 (access agreements; access rights; operation of existing agreements and rights)

Supplementary: clauses 72 and 73 (regulations about non-GBR infrastructure, facilities and services; interpretation of Chapter 1 of Part 3)

The ORR: clause 76 (modification of licence conditions)

Publication of information: clause 81 (publication of information by Welsh Ministers)

Co-operation etc: clauses 82 and 83 (duty to consult Scottish and Welsh Ministers; duty to consult mayoral combined authorities)

Removal of road vehicles: clause 87 (charging for removal etc of road vehicles)

Transfer schemes: clause 88 (transfer schemes made by Secretary of State), clauses 90 to 91 including Schedule 3 (transfer schemes made by Welsh Ministers; further provision about transfer schemes) and clause 93 (tax consequences of transfer schemes)

Licensing etc of train drivers: clause 94 (licensing etc of train drivers)

International interests in railway rolling stock: clause 95 (Cape Town Convention and Luxembourg Protocol)

General: clauses 96 (including Schedule 4 (paragraphs 4, 5, 7, 8, 10-12, 14-18, 20, 21, 23-27, 30-32, 42, 44, 46, 50, 52-54, 56-60, 62, 64, 65, 68, 70)) to 99 (minor and consequential amendments; power of Secretary of State to make consequential provision; regulations; general interpretation) and clause 101 (commencement)

13. The Deputy Minister addresses the UK Government's views on the need for consent in paragraphs 119 and 120 of the Memorandum, as follows:

> *"Rt Hon Heidi Alexander MP, Secretary of State for Transport wrote to the previous Cabinet Secretary for Transport and North Wales to advise that in the UK Government's view the consent of the Senedd is needed for clauses 4, 7, 9, 18, 19, 24, 29-31, 33, 34 and 81 (now 83).*
>
> *Whilst I broadly agree with the UK Government's list, I feel there is a divergence between my view and the view of the UK Government on the need for Senedd consent. In addition to the clauses listed in paragraph 119, it is advised that Senedd consent is required for clauses 2, 3, 11, 12, 15-17, 20, 21, 25, 27, 28, 32, 35-37, 39, 40, 42, 43, 45-48, 51, 52, 59-73, 76, 81, 82, 87, 88, 90, 91, 93-99, 101, Schedule 1, Schedule 2 (Part 1), Schedule 3 and Schedule 4 (paragraphs 4, 5, 7, 8, 10-12, 14-18, 20, 21, 23-27, 30-32, 42, 44, 46, 50, 52-54, 56-60, 62, 64, 65, 68 and 70)."*

Delegated powers in the Bill

14. The Bill contains one new regulation-making power for the Welsh Ministers, as well as a number of provisions which delegate powers to the Secretary of State (and HM Treasury) to act in devolved areas, as follows:

Provision(s)	Power	Exercisable by	Scrutiny procedure
Clause 3	Henry VIII power to confer further functions on GBR by regulations	Secretary of State	Draft affirmative
Clause 7	To give directions to GBR about the exercise of its functions	Secretary of State (with the consent of the Welsh Ministers in specified circumstances)	No procedure
Clause 9	To give guidance to GBR about the exercise of its statutory functions and to make associated provision	Secretary of State	No procedure
Clause 15	To prepare and publish a long-term rail strategy	Secretary of State (following consultation with the Welsh Ministers)	No procedure
Clause 21	To give guidance to ORR about the exercise of its functions in relation to railways	Secretary of State (following consultation with the Welsh Ministers)	No procedure
Clause 29	To grant exemption from designation for Wales-only railway	Welsh Ministers	Annulment

	services by regulations		
Clause 51	To exclude certain passenger services from the duties in clauses 37 to 43, 45 and 48, or to modify their application in that regard, by regulations	Secretary of State	Negative
Clause 68	To make provision about access repeals by regulations	Secretary of State	Negative
Clause 71	To amend existing access contracts by regulations	Secretary of State	Negative
Clause 72	To amend the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016. The provision also includes a Henry VIII power to make consequential amendments to primary legislation	Secretary of State	Draft affirmative
Clause 73	Henry VIII power to amend the definition of 'GBR infrastructure' by regulations	Secretary of State	Draft affirmative
Clause 93	To vary the application of specified "relevant taxes" where they	HM Treasury	Negative

	relate to a transfer scheme by regulations		
Clause 94	To amend the train driving licensing regime by regulations	Secretary of State	Draft affirmative
Clause 95	To give effect to the Cape Town Convention and Luxembourg Protocol by regulations	Secretary of State	Draft affirmative
Clauses 97 and 98	Henry VIII to make minor and consequential provision by regulations	Secretary of State	Draft affirmative procedure if the regulations modify primary legislation, but negative resolution procedure in other cases
Clause 101	To bring the Bill into force by commencement regulations	Secretary of State	No procedure
Schedule 1, paragraph 3	To prescribe railway licence application procedures	Secretary of State	Negative
Schedule 2, paragraph 6	To expand the scope of financial assistance power	Secretary of State	Draft affirmative

15. The House of Lords' Delegated Powers and Regulatory Reform (DPRR) Committee reported on the Bill on 10 July 2026.[10] In its report, the DPPR Committee comments on the powers in clauses 71, 72, and 73.

16. On the power in clause 71(1), the DPRR Committee says the UK Government has "proposed a power that is drafted in strikingly broad terms and without any express or implied reference to its purpose". The Committee adds "We have often made the point that we do not judge delegated powers on how the Government says it will use them but on how any Government might use them. A power that is wider than necessary is not above criticism merely because the Government say they will not use the power to its full extent." The DPRR Committee recommends that the power in clause 71(1) should be amended so that it can only be used for purposes that would give effect to the UK Government's intentions and so that the exercise of the power is subject to the draft affirmative procedure.[11]

17. Regarding the Henry VIII power in clause 72, the DPRR Committee notes that the power to make consequential amendment allows the amendment of "provision contained in this or any other Act", which unusually includes Acts to be made in future parliamentary sessions. The Committee recommends that, in the absence of any justification from the UK Government for the ability to amend Acts passed in future sessions, the provision should be amended to remove that ability.[12]

18. On the Henry VIII power in clause 73, the DPRR Committee is particularly concerned that the power to amend the definition of 'GBR infrastructure' is accompanied by a confusing explanation which "raises a suspicion that the delegation of power is unnecessary". It therefore recommends that, in the absence of adequate justification from the UK Government, the power should be removed from the Bill.[13]

19. At the time of writing, the UK Government's response to the DPRR Committee's report was not available.

[10] House of Lords **Delegated Powers and Regulatory Reform Committee, 4th Report of Session 2026-27**
[11] House of Lords **Delegated Powers and Regulatory Reform Committee, 4th Report of Session 2026-27**, paragraphs 6 to 17
[12] House of Lords **Delegated Powers and Regulatory Reform Committee, 4th Report of Session 2026-27**, paragraphs 23 to 27
[13] House of Lords **Delegated Powers and Regulatory Reform Committee, 4th Report of Session 2026-27**, paragraphs 18 to 22

The Welsh Government's engagement with the UK Government

20. At paragraph 9 of the Memorandum, the Deputy Minister states that "UK Government and Welsh Government officials have been in regular contact during the development of the Bill. Engagement will continue at an official and Ministerial level where necessary."

The Welsh Government's position as set out in the Memorandum

21. In the Memorandum the Deputy Minister states:

> *"Given the complicated nature of the current devolution settlement for Wales, I recognise the need for provisions in this Bill which have regard to devolved matters.*
>
> *However, I have concerns about how a number of clauses in the Bill affect the role of Welsh Ministers and the Senedd. I am seeking further engagement to understand the full implications of the Bill and how our aspirations for rail in Wales can be safeguarded and furthered. As a result, I am not yet in a position where I can recommend consent."*[14]

3. Committee consideration

22. We considered the Memorandum at our meeting on 14 September 2026.[15] The Committee wrote to the Deputy Minister on 22 September seeking clarity on certain matters raised in the Memorandum.[16] The Deputy Minister responded on 6 October 2026.[17] We agreed our report at our meeting on 19 October 2026.[18]

[14] Welsh Government, **Legislative Consent Memorandum on the Railways Bill**, July 2026, paragraphs 123 and 124
[15] **Legislation Committee, 14 September 2026**
[16] **Letter to the Deputy Minister for Transport**, 22 September 2026
[17] **Letter from the Deputy Minister for Transport**, 6 October 2026
[18] **Legislation Committee, 19 October 2026**

23. We ask that the Deputy Minister responds in writing to the recommendations and conclusions we make in this report.

Legislative consent

24. In the Memorandum the Deputy Minister highlights that the UK Government does not agree with the Welsh Government's assessment that the Senedd's consent should be sought for clauses 2, 3, 11, 12, 15 to 17, 20, 21, 25, 27, 28, 32, 35 to 37, 39, 40, 42, 43, 45 to 48, 51, 52, 59 to 73, 76, 81, 82, 87, 88, 90, 91, 93 to 99 and 101, as well as Schedules 1, 2, 3 and 4.

25. In relation to this difference of opinion, the Deputy Minister told us that the UK Government has updated its analysis and was now in agreement over clauses 35, 43, 81, 88, 90 and 91, as well as Schedules 3 and 4. Nonetheless, there remains a difference of opinion in relation to certain provisions. The Deputy Minister states that "UK Government analysis identified these clauses as reserved and not modifying Welsh Ministers [sic] devolved responsibilities and therefore do not consider that legislative consent is required."[19]

The legislative consent process

26. Standing Order 29.2(i) states that a member of the government must lay a legislative consent memorandum in relation to any UK Government Bill that is a relevant Bill on its introduction to the first House, normally no later than 2 weeks after introduction. The Memorandum was not laid until eight weeks after the Bill's introduction to the House of Commons.

27. The Deputy Minister told us:

> *"The Railways Bill is a substantial and complex piece of legislation, containing provisions with significant implications for the future governance and operation of the railways. The Bill was introduced shortly after the Senedd Election and formation of the new Welsh Government, at a time when incoming Ministers were considering the wider priorities and policy approach for the rail sector in Wales. Time was required for officials to undertake detailed analysis, which extended beyond the immediate provisions of the Bill and included consideration of how the legislation aligned with the Welsh Government's wider policy ambitions. This included*

[19] **Letter from the Deputy Minister for Transport**, 6 October 2026, response to question 3

> *commitments set out in Plaid Cymru's 100 Day Plan to explore the case for the full devolution of rail powers and rail infrastructure to Wales.*
>
> *Given the scale, complexity and strategic significance of the Bill, Ministers considered it important to fully understand both its legal and practical implications for Wales, as well as the extent to which it would support or constrain future options for rail devolution. This allowed Ministers to consider the implications of the Bill for Wales and determine their preferred policy approach before the Legislative Consent Memorandum was laid."*[20]

The Welsh Government's Principles on UK Legislation in Devolved Areas, and matters relating to delegated powers in the Bill

General

28. In July 2026, the Welsh Government agreed its Principles on UK Legislation in Devolved Areas.[21] These are principles it will follow when dealing with legislation introduced to the UK Parliament that seeks to make provision in areas devolved to Wales.

29. The Principles begin with the headline statement that "Executive powers in devolved areas should be exercised by the Welsh Ministers".[22] Given the extensive delegation of power in the Bill to the Secretary of State, we asked to what extent are the provisions in the Bill consistent with the Welsh Government's Principles. The Deputy Minister said in his letter of 6 October that " a coherent legislative framework is required to support the effective operation of a railway system that functions across the Wales-England border", adding:

> *"This aligns with the Principles, which recognise that UK legislation may be appropriate where the legislation addresses both devolved*

[20] **Letter from the Deputy Minister for Transport**, 6 October 2026, response to question 1
[21] Welsh Government, '**Written Statement: Welsh Government Principles on UK Legislation in Devolved Areas**', 14 July 2026
[22] **Welsh Government Principles on UK Legislation in Devolved Areas, July 2026**, paragraph 1

> *and reserved matters and where cross-border administrative arrangements make a common approach more effective."*[23]

30. Clause 24 of the Bill imposes a duty on the Secretary of State and the Welsh Ministers to prepare a Memorandum of Understanding (MoU) which sets out how they will work together in the exercise of their respective functions in relation to railways and railway services. An MoU is not (generally) legally enforceable, nor is the acceptance of a non-legislative agreement in line with the Welsh Government's principles. In his letter the Deputy Minister acknowledges that memoranda of understanding "should not normally be relied upon in place of statutory provision". He told us:

> *"Reliance on an MoU is not the Welsh Government's preferred approach. However, in this instance, an MoU setting out how the Welsh Ministers and Secretary of State will work together in the exercise of their railway functions will provide flexibility to support evolving cross-border operational and working arrangements between the relevant parties. (...)*
>
> *These commitments reflect how the Secretary of State and Welsh Ministers will work together in practice, and recording practical arrangements in legislation would not only provide little flexibility in how services are delivered, and also limit how these commitments can be amended, as the railway and its delivery evolves and develops. This is something my officials have discussed with UK Government officials, and I am content with this.*
>
> *Following productive and pragmatic Ministerial engagement, the UK Government has committed to proposing an amendment to the Railways Bill to ensure that the Statement of Objectives includes a dedicated Wales and Borders chapter."*[24]

Consult vs consent

31. There are several provisions in the Bill that delegate powers to the Secretary of State who, before exercising, must consult with the Welsh Ministers but need

[23] **Letter from the Deputy Minister for Transport**, 6 October 2026, response to questions 2 and 9
[24] **Letter from the Deputy Minister for Transport**, 6 October 2026, response to question 2

not seek their consent. We asked the Deputy Minister for his views on these powers. He responded as follows:

- On clause 15 – "A stronger role for the Welsh Ministers in the Bill has been raised at every opportunity during engagement with UK Government at both Ministerial and Official level. However, in this case, the Secretary of State will be responsible for the long-term strategy as it relates to Great Britain and so I consider that a requirement to consult with Welsh Ministers is appropriate."[25]

- On clause 21 – "The Bill provides for the guidance to be issued by the Secretary of State reflecting their role as the primary funder and sponsor of the railway in England and Wales. The Secretary of State will have responsibility for the rail network and infrastructure delivered by GBR and therefore requires clear accountability through the wider rail governance framework and the ORR's new advisory role to the Secretary of State. This approach mirrors the existing legislative framework, thus the Bill maintains an established approach. Under section 4 of the Railways Act 1993, the Secretary of State is required to consult Welsh Ministers before issuing guidance to the ORR. Consultation with Welsh Ministers provides an appropriate mechanism for ensuring that Welsh interests are taken into account, while maintaining the Secretary of State's ability to issue guidance to the ORR."[26]

- On clause 28 – "These powers replicate the current powers of designating passenger rail services… This is a practical approach to administrating railway passenger services, rather than risking creating an industry around resolving potential disagreements that could potentially disrupt delivery of rail services. Discussions have taken place with the UK Government on these matters, and agreement was reached that meeting the objectives of Welsh Government is best served through the review of the current Wales and Borders Agreement, already underway ahead of GBR Day One."[27]

[25] **Letter from the Deputy Minister for Transport**, 6 October 2026, response to question 7
[26] **Letter from the Deputy Minister for Transport**, 6 October 2026, response to question 8
[27] **Letter from the Deputy Minister for Transport**, 6 October 2026, response to question 11

Imbalance of ministerial powers

32. We asked the Deputy Minister about a number of provisions in the Bill where the Secretary of State and the Welsh Ministers are treated differently and afforded different rights and responsibilities.

33. Under clause 3 of the Bill, when the Secretary of State wishes to imposes additional functions on GBR which affect devolved areas, the Secretary of State is under no obligation to engage with the Welsh Ministers. The Deputy Minister confirmed that Welsh Government officials have raised this matter with counterparts in the UK Government. The UK Government does not consider it necessary to include a consultation requirement because engagement with the Welsh Ministers is provided for through the wider governance arrangements (including the MoU) and partnership arrangements between GBR and Transport for Wales. The Deputy Minister added "It is also worth noting that under clause 16, GBR and ORR will be required to have regard to strategies, including the Wales Transport Strategy. In addition, this power cannot be used to alter the devolved settlement, and I expect the MoU to provide a mechanism for the Welsh Ministers to influence the organisation and design of GBR."[28]

34. Under clause 4 of the Bill, the Welsh Ministers must consult the Secretary of State before making arrangements with GBR, a subsidiary of GBR or any company jointly owned by GBR for them to exercise functions on behalf of the Welsh Ministers. The Deputy Minister considers that, as GBR will be a company owned and funded by the Secretary of State, the consultation requirement will ensure the views of the Secretary of State are considered before GBR is tasked with new functions which may, for example, have an impact on reserved matters or on costs.[29]

35. Clauses 7 and 9 of the Bill empower the Secretary of State to give directions and issue guidance to GBR regarding the exercise of its functions. The same power is not given to the Welsh Ministers to give directions or guidance to GBR in relation to a GBR-provided Welsh service. The Deputy Minister said in his letter:

> *"The Bill reflects this funding and governance framework by providing for these powers to sit with the Secretary of State.*

[28] **Letter from the Deputy Minister for Transport, 6 October 2026**, response to question 4
[29] **Letter from the Deputy Minister for Transport, 6 October 2026**, response to question 5

> *The legislation and the accompanying MoU also provide for engagement with Welsh Ministers on matters affecting Wales. This is intended to ensure that Welsh Ministers' views are taken into account where directions or guidance issued to GBR have implications for Wales, while maintaining a clear framework for accountability in relation to the funding and oversight of the railway.*
>
> *In addition, where Welsh Ministers have delegated functions to GBR under clause 4 or entered into a public service contract with GBR under clause 31(4)(b) for the provision of passenger services, clause 7 of the Bill includes a requirement for the Secretary of State to obtain Welsh Ministers' consent before issuing directions that directly affect those functions. Given this is an area where Welsh Ministers exercise executive functions only, clause 7 requirements for obtaining Welsh Ministers' consent is considered an appropriate safeguard.*
>
> *The MoU, and the legislation outlines the engagement approach with Welsh Ministers where Directions and Guidance are issued to GBR."*[30]

36. In the Bill, there is also a difference between how the Welsh and Scottish Ministers are treated. Under clause 25, the Secretary of State is required to consult with the Scottish Ministers before designating cross-border services, but there is no similar requirement to consult the Welsh Ministers before designating a Welsh service. The Deputy Minister said designation is "very high-level, not a detailed service specification", adding "Management of cross-border services is overseen by the Wales and Borders agreements, which the UK Government have in recent discussions committed to review and revise ahead of GBR Day One, to address challenges in delivering the railway."[31]

37. Clause 97 of the Bill also delegates a power to the Secretary of State which is not similarly delegated to the Welsh Ministers. The power in clause 97 is a Henry VIII power, enabling the Secretary of State to make consequential provision as a result of the Bill's main provisions. In his letter, the Deputy Minister gives his view that the limited devolved competence and devolved legislation in this area

[30] **Letter from the Deputy Minister for Transport, 6 October 2026**, response to question 6
[31] **Letter from the Deputy Minister for Transport, 6 October 2026**, response to question 10

means the power to make consequential provision is appropriately delegated to the Secretary of State.[32]

38. Clause 72 of the Bill also delegates a broad Henry VIII power to the Secretary of State to make consequential amendments to primary legislation regarding non-GBR infrastructure. In the Memorandum, the Deputy Minister notes that "the stated intention of this clause is to ensure that legislation governing other infrastructure managers (e.g. Core Valleys Lines) can be updated periodically to ensure alignment with GBR."[33] We highlighted our understanding that the Bill does not place this limitation on the power; nor is it our understanding that there is any requirement for the Secretary of State to seek the consent of, or even consult with, the Welsh Ministers before exercising the power. The Deputy Minister provided us with the following information and views:

> *"Engagement between the Welsh and UK Government on implementation of Clause 72 has been ongoing throughout the passage of the Bill. There is an upcoming official level workshop to outline Welsh Government ambitions for any regulations that might be made under clause 72 to support their aspirations to integrate the management and operation of the infrastructure and passenger services on the Core Valley Lines. DfT officials and the Memorandum of Understanding are clear on the UK Government's commitment to continue to work closely with Welsh Ministers to understand their objectives and consider how these can be facilitated using Clause 72, subject to the Bill's passage and any regulations made under this power. (...)*
>
> *The UK Government's intention is to work closely with Welsh Government to enable benefits to the core valley lines as outlined in the MoU signed with the last administration. The UK Government's view is that the power in clause 72 needs to be broadly drafted, so as not to inadvertently close off future options for the use of the power. In the context of Welsh Minister ambitions for the Core Valley Lines, they may require the clause 72 power to be exercised in ways not yet identified, the breadth of clause 72 is helpful to Welsh interests. (...)*

[32] **Letter from the Deputy Minister for Transport, 6 October 2026**, response to question 15
[33] Welsh Government, **Legislative Consent Memorandum on the Railways Bill**, July 2026, paragraph 87

This is a matter reserved to the UK Government, however as outlined within the MoU, the UK Government recognises our ambitions to reduce the complexity and costs associated with operating the Core Valley Lines and subject to the Railways Bill receiving Royal Assent and the final form of the Act, the power in clause 72 provides a power to amend the Access and Management Regulations (AMRs), which could support our ambitions to simplify the AMRs as they apply to the Core Valley Lines. UK Government have been clear that they remain committed to continuing engagement with Welsh officials to better understand our aspirations and consider how these powers could support us, consistent with the commitments set out in the Memorandum of Understanding. (...)

Clause 72 already contains a statutory requirement for the Secretary of State to consult such persons as they consider appropriate before making regulations under Clause 72 and any regulations are subject to the affirmative procedure, ensuring Parliamentary scrutiny and debate in both Houses before any changes can be made. Those with a relevant interest in, or those who may be affected by any proposed changes will be consulted as appropriate. The MoU also provides an additional framework for engagement between our Ministers and the SoS. (...)

Should regulations be made using the power in Clause 72, they would be made under the affirmative Parliamentary procedure which provides for debate and a vote in both Houses of Parliament, as well as a statutory requirement for the SoS to consult before regulations are made."

New delegated powers for the Welsh Ministers

39. The Bill, at clause 29, provides the only new regulation-making that may be exercised by the Welsh Ministers. If and when exercising the power, the regulations will be subject to the Senedd annulment procedure. When we asked the Deputy Minister to confirm whether he asked the UK Government to attach the annulment procedure to the exercise of this power, and if so, why the annulment procedure is considered to be appropriate, he responded:

> *"The Bill replicates the existing powers of designation for Welsh Ministers, Scottish Ministers and the Secretary of State. The annulment procedure attached in clause 29(4) replicates the existing provision in section 24(12B) of the Railways Act 1993. This is consistent with the procedure attached for the Secretary of State and Scottish Ministers. I am content with this."*[34]

Implementation of international treaties

40. On the subject of clause 95, which includes a power for the Secretary of State to implement the Cape Town Convention and the Luxembourg Protocol by regulations subject to the affirmative scrutiny procedure in the UK Parliament, the Deputy Minister said in his letter that secondary legislation has been previously used to implement aspects of the Convention. He added:

> *"Although this provision has impact on devolved policy i.e., it could affect rolling stock and other assets used to provide rail passenger services and so it was appropriate to lay an LCM, it is not a matter for which there is devolved competence, and the provision appropriately reflects this."*[35]

Engagement with the UK Government

41. We questioned the Deputy Minister on his statement in paragraph 124 of the Memorandum, in which he notes the Welsh Government's concerns about how a number of clauses in the Bill affect the role of Welsh Ministers and the Senedd. In his letter to us, the Deputy Minister highlights that intergovernmental discussions have resulted in initial concerns of the Welsh Government being "addressed or significantly mitigated". He added that he is "particularly pleased that the UK Government has committed to bringing forward an amendment to require GBR to publish a Statement of Objectives for Wales and Borders, providing greater transparency and accountability in relation to the delivery of rail services affecting Wales".[36]

[34] **Letter from the Deputy Minister for Transport, 6 October 2026**, response to question 12
[35] **Letter from the Deputy Minister for Transport, 6 October 2026**, response to question 14
[36] **Letter from the Deputy Minister for Transport, 6 October 2026**, response to question 16

4. Our view

Legislative consent

42. We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum.

43. We also note that there are differences of opinion between the Welsh and UK governments as regards which provisions in the Bill require the Senedd's consent.

> **Conclusion 1.** We agree with the Welsh Government's assessment, as set out in the Memorandum, of the provisions within the Bill which require consent of the Senedd in accordance with Standing Order 29.

The legislative consent process: adherence to the two-week deadline for laying legislative consent memoranda

44. This Bill - as with a number of others triggering the legislative consent process during the first few months of the Seventh Senedd - was introduced very soon after the Welsh Government was formed. We note the reflections of the Cabinet Minister for Government Effectiveness and the Constitution about the challenges of the timing of the King's Speech[37], and acknowledge that this may have had implications for the ability of the Welsh Government to adhere to the two-week deadline set out in Standing Orders for laying a legislative consent memorandum. In principle, we consider that analysing the relevant provisions of a Bill and coming to a view on consent so soon after the establishment of a new government is a reasonable example of where the two-week deadline may be difficult to meet.

45. We also acknowledge the views on this matter set out by the Deputy Minister in his letter. In particular, that time was required for Welsh Government officials "to undertake detailed analysis, which extended beyond the immediate provisions of the Bill and included consideration of how the legislation aligned with the Welsh Government's wider policy ambitions".

[37] **Legislation Committee, Record of Proceedings, 21 September 2026,** paragraph 35

Conclusion 2. We have concerns that taking eight weeks to consider how the UK Government Bill aligned with wider policy ambitions in the Welsh Government is an unsustainable practice which has the potential to inhibit the key role Senedd Committees play in the legislative consent process.

The Welsh Government's Principles on UK Legislation in Devolved Areas, and matters relating to delegated powers in the Bill

General

46. As a Committee we have agreed that we will monitor the extent to which each Welsh Minister is adhering to the Welsh Government's Principles on UK Legislation in Devolved Areas when they lay legislative consent memoranda before the Senedd.

47. As we note above in paragraph 29, the headline statement in the Principles is that "Executive powers in devolved areas should be exercised by the Welsh Ministers".

48. Sixteen powers are delegated to the UK Government in the clauses of the Bill that the Welsh Government considers are subject to the legislative consent process; only one power is delegated to the Welsh Ministers.

49. Of the sixteen powers delegated to the UK Government, only one is accompanied by a statutory duty to obtain the consent of the Welsh Ministers in specified circumstances. Two other powers may be exercised following consultation with the Welsh Ministers.

50. The Welsh Government has also been explicit in its Principles that memoranda of understanding and ministerial assurances should not be relied upon in place of statutory provision.

51. The Welsh Government has qualified the explicit statements in the Principles with the line "any departure from the above would need to be justified by exceptional circumstances on a case-by-case basis".

52. We acknowledge the Deputy Minister's view that a requirement for a coherent legislative framework to support the effective operation of cross-border railway system means his decisions are aligned with the Welsh

Government's Principles, because the Principles recognise that UK legislation may be appropriate where the legislation addresses both devolved and reserved matters and where cross-border administrative arrangements make a common approach more effective.

53. We also acknowledge the confirmation from the Deputy Minister that reliance on a memorandum of understanding is not the Welsh Government's preferred approach, but that he believes it will provide flexibility to support evolving cross-border operational and working arrangements.

54. However, we are unconvinced that a satisfactory case has been made for why the Deputy Minister is content with the extensive delegation of power to the UK Government. We discuss specific delegated powers in the following paragraphs.

55. We also highlight that the Deputy Minister's acceptance of a non-binding memorandum of understanding is the second time a Welsh Minister has accepted a non-legislative agreement over statutory provision in the space of four months.[38] We intend to monitor the acceptance by Welsh Ministers of non-legislative agreements throughout the Seventh Senedd.

Consult v consent

56. We highlight in earlier paragraphs that, before exercising powers in clauses 15, 21 and 28, the Secretary of State must consult with the Welsh Ministers. However, there will be no statutory requirement to obtain their consent.

57. With regards to the power in clause 15, it appears that the Deputy Minister and Welsh Government officials have been pursuing a stronger statutory role for the Welsh Ministers, without success. We note the Deputy Minister now considers that a consulting role for the Welsh Ministers is appropriate because the Secretary of State will be responsible for the long-term strategy as it relates to Great Britain. Under the terms of the Bill as introduced, responsibility for the long term strategy always sat with the Secretary of State. We are therefore unclear why the Deputy Minister has changed his position.

58. As for the power in clause 21, the Deputy Minister highlights that the Bill's provisions mirror the existing legislative framework under the *Railways Act 1993*. We reject the implication that something already in existence cannot –

[38] **Legislation Committee, Report on the Welsh Government's Legislative Consent Memorandum on the Steel Industry (Nationalisation) Bill**, July 2026

and should not - be improved upon when an opportunity arises. The existing legislative framework was created before the Welsh Government adopted its Principles on UK Legislation in Devolved Areas. At the very least, this appears to us to be a missed opportunity for the Welsh Government to make the case for provisions that reflect its Principles, rather than retaining elements of a framework that appear to be largely inconsistent with them.

59. With regards to the power in clause 28, while we note the Deputy Minister's comments that agreement was reached between the two governments that "meeting the objectives of Welsh Government is best served through the review of the current Wales and Borders Agreement", we are unclear why this should be the case.

Recommendation 1. The Deputy Minister should clarify why he is now content to accept a consulting role for the Welsh Ministers before the Secretary of State exercises the power in clause 15.

Recommendation 2. The Deputy Minister should clarify why, with regard to clause 21, he did not seek to use the Bill to improve the Welsh Ministers' role under the existing legislative framework to reflect the Welsh Government's Principles on UK Legislation in Devolved Areas.

Recommendation 3. The Deputy Minister should clarify why, as regards clause 28, meeting the objectives of the Welsh Government is best served through the review of the current Wales and Borders Agreement.

Imbalance of ministerial powers

60. We note in paragraph 32 that there are a number of provisions in the Bill where the Secretary of State and the Welsh Ministers are treated differently and afforded different rights and responsibilities. We questioned the Deputy Minister on several of these provisions.

61. The Deputy Minister's comments on clause 3 suggest that the Welsh Government was originally sufficiently concerned with this provision that its officials raised with their UK Government counterparts the issue of the Secretary of State being under no obligation to engage with the Welsh Ministers. It is unclear from the Deputy Minister's comments whether he agrees with the UK Government that a consultation requirement is not necessary.

62. The Deputy Minister says he expects the memorandum of understanding to provide a mechanism for the Welsh Ministers to influence the organisation and design of GBR. However, we note that the memorandum of understanding has already been agreed and published[39], so it is not clear why and how the Deputy Minister expects it to provide for such a mechanism, or whether indeed it already does so.

63. The Deputy Minister will know that a memorandum of understanding and other engagement mechanisms are not the same as the Welsh Ministers having a statutory role in the exercise of the clause 3 power. Memoranda of understanding are, generally speaking, not legally enforceable. They are therefore not capable of creating any enforceable, or even certain, mechanisms for the Welsh Ministers to influence the organisation and design of GBR.

Recommendation 4. The Deputy Minister should clarify if and how the Welsh Government has fed into the already published Memorandum of Understanding, and confirm if and how the Welsh Government will contribute to its amendment in the future.

Recommendation 5. The Deputy Minister should commit to monitoring the UK Government's compliance with the Memorandum of Understanding, and to subsequently report periodically to the Senedd on its findings.

64. We are also unclear why the Deputy Minister is content with the UK Government's position on the clause 7 provision. The Deputy Minister states that the memorandum of understanding provides for engagement with Welsh Ministers on matters affecting Wales. However the wording of the memorandum states that when issuing directions the Secretary of State should consider how it may affect the Welsh Ministers' functions. The word "should" means that this is not a requirement upon the Secretary of State, and there is also no requirement for the Secretary of State to engage with the Welsh Ministers. We note that the requirement for the Secretary of State to consult the Welsh Ministers in clause 7 of the Bill may not apply to all of the Welsh Ministers' functions, as it is restricted to where the directions relate to functions

[39] Welsh Government, **Memorandum of Understanding between UK government and Welsh Government on Rail Reform in the Wales and Borders Area**

delegated to GBR under clause 4 or relating to a public service contract with GBR under clause 31(4)(b) for the provision of passenger services.

> **Recommendation 6**. The Deputy Minister should clarify what statutory or other clear mechanisms are to be put in place for the Welsh Ministers to be consulted whenever any directions issued under clause 7 affects their functions.

65. With regards to clause 25 and the difference between how the Welsh and Scottish Ministers are treated in the Bill, the Deputy Minister has not addressed the question we asked of him in his response to our letter.

> **Recommendation 7**. Under clause 25 of the Bill, the Secretary of State is required to consult with the Scottish Ministers before designating cross-border services, but there is no similar requirement to consult the Welsh Ministers before designating a Welsh service. The Deputy Minister should confirm what discussions he has had with the UK Government about why a consultative role has not been afforded to the Welsh Ministers.

66. The Deputy Minister's response to our questions about clause 72 causes us some concern and begs further questioning.

67. In particular, we find it disappointing that the Deputy Minister is supportive of a broadly drafted executive power which he openly states could be "exercised in ways not yet identified". This is not acceptable, and runs counter to good legislative discipline. Delegated powers should be sought only when their use can be clearly anticipated and defined. Broad powers, including those sought for flexibility or the convenience for government, are unacceptable. This is a principle long-defended by parliaments across the UK.[40] Indeed, we are aware that our predecessor committee routinely challenged the previous Welsh Government whenever it sought or supported such powers.[41]

[40] See, for example **House of Lords Constitution Committee, 16th Report of Session 2017-19, The Legislative Process: The Delegation of Powers,**, November 2018
[41] See, for example **Legislation, Justice and Constitution Committee, Report on the Welsh Tax Acts etc. (Power to Modify) Bill**, April 2022

68. It is also concerning that the exercise of such a broad power should be influenced only by a non-enforceable memorandum of understanding. Of similar concern is the Deputy Minister's apparent reliance on the goodwill and intention of the current UK Government. Delegated powers must be considered through the lens of what can be done using them, and not what a current executive says it will do. In its report on the Bill, the DPRR Committee has made just this point.

69. The Deputy Minister highlights that clause 72 includes a power to amend the Access and Management Regulations (AMRs), stating that such amendments could support the Welsh Government's ambitions to simplify the AMRs as they apply to the Core Valley Lines. The exercise of that power rests solely with the UK Government, with no legal obligation for the Welsh Ministers to be involved. Furthermore, as a power exercised by the Secretary of State, even if the Welsh Government is involved in the development of regulations to deliver on its ambitions, neither the Welsh Ministers nor the Secretary of State will be subject to scrutiny by, or held accountable to, the Senedd.

Recommendation 8. The Deputy Minister should:

- explain in detail why he is supportive of the broad power in clause 72:

- clarify why it is acceptable for an executive to be delegated a power which may be "exercised in ways not yet identified";

- clarify how the clause 72 power is in line with the Welsh Government's Principles on UK Legislation.

70. Finally as regards clause 97, which also delegates a power to the Secretary of State which is not similarly delegated to the Welsh Ministers, we are unconvinced with the view expressed by the Deputy Minister that the limited devolved competence and devolved legislation in this area means the power to make consequential provision is appropriately solely delegated to the Secretary of State.

Recommendation 9. The Deputy Minister should confirm whether he has made a request to the UK Government that the Welsh Ministers must be consulted should the power in clause 97 be used to make

amendments to Welsh legislation or legislation in an area devolved to Wales.

New delegated powers for the Welsh Ministers

71. We note that clause 29 delegates a new regulation-making power to the Welsh Ministers which, if and when used, will be subject to the Senedd annulment procedure.

72. We further note the Deputy Minister's evidence that this provision replicates the existing powers of designation for Welsh Ministers, Scottish Ministers and the Secretary of State, and that the Deputy Minister is content with the annulment scrutiny procedure as it is consistent with the procedure attached for the Secretary of State and Scottish Ministers.

Implementation of international treaties

73. We note that clause 95 of the Bill includes a power for the Secretary of State to implement two international treaties by regulations subject to the affirmative scrutiny procedure in the UK Parliament.

74. We acknowledge the Deputy Minister's evidence that secondary legislation has been previously used to implement aspects of the Cape Town Convention. Nonetheless, we are aware that our predecessor committee in the Sixth Senedd raised concerns about the former UK Government's departure from the convention of using primary legislation to give effect to international agreements, and we draw this to the attention of the Senedd.[42]

75. We note that the Deputy Minister makes clear in the Memorandum that the Bill intersects with the implementation of international obligations and devolved matters. A Welsh Government commitment to provide such clarity was secured by our predecessor Committee and we welcome the continuation of this practice.[43]

76. We note, however, that this Bill has the potential to be another unwelcome example of legislation which implements UK international obligations proceeding without Senedd scrutiny or consent, a situation which arose on a

[42] **Legislation, Justice, and Constitution Committee, Report on the Welsh Government's Legislative Consent Memorandum on the Health and Care Bill**, December 2021
[43] **Letter from the Minister for Education and Welsh Language to the Legislation, Justice and Constitution Committee**, 6 October 2021

number of occasions in the Sixth Senedd. We will continue to monitor this situation in the Seventh Senedd.

Engagement with the UK Government

77. We note the Deputy Minister's comments that intergovernmental discussions have resulted in his initial concerns with the Bill being "addressed or significantly mitigated". We also note his statement that the UK Government has committed to bringing forward an amendment to require GBR to publish a Statement of Objectives for Wales and Borders.

78. We note that we can expect a supplementary legislative consent memorandum to be laid before the Senedd providing details of any amendments tabled to the Bill which have regard to a devolved matter.

> **Recommendation 10**. The Deputy Minister should provide details of how the Welsh Government's initial concerns with the Bill have been addressed or significantly mitigated.