



Rail Forum
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Williams-Shapps Plan for Rail : legislative changes required to implement rail reform

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Organisation Details and Location

The Rail Forum is a not for profit, national industry association representing and supporting the rail supply chain. Based in Derby, we have some 340-member organisations spread across Great Britain; from major global companies to SMEs. Our members deliver the complete range of products and services across the whole railway including infrastructure, rolling stock, digital solutions, passenger and freight services. We support our members through our team of 6 people and we are led and governed by our 16 Executive Directors drawn from our members.

Question 1

Does the scope of the proposed designation of Great British Railways as an integrated rail body appropriately capture what you would expect for an effective guiding mind for the railways? (paragraph 2.6) Please explain.

- We welcome the concept of a single guiding mind for the railways. The consultation document, however, presents a confused picture about the split of responsibility between Great British Railways (GBR) and Department for Transport (DfT) / Secretary of State (SoS). On the one hand it states that GBR will take strategic decisions and develop a 30-year strategic plan yet in several places it refers to DfT and the SoS being responsible for strategy. In drafting the legislation, it will be crucial to ensure this distinction is clear. The consequences of such confusion will undermine the whole rail transformation agenda.
- We believe the core functions of GBR as set out in paragraph 2.7 would be best described in a way that will focus minds on what the railway needs to deliver. This should be based on an ambitious vision for the railway in the context of its critical role supporting our future economy. For example, a function based on "managing the GBR infrastructure" will not encourage the behaviours required to improve customer offerings and simplify the sector whereas a function such as "ensuring provision of a reliable network that facilitates growth in passenger and freight traffic" would.

- The bullet points contained in para 2.8 are not mutually inclusive and could lead to conflicting priorities. We would suggest it would be better to set the license conditions on the basis of objectives and outcomes rather than prescriptive activities.
- The legislation will need to be clear on the penalties facing GBR should it fail in its license duties. For example, could the members of the GBR Board face corporate manslaughter charges for failures in health and safety. Could GBR lose its license? How will the legislation ensure co-operation / collaboration – how will it be measured and what will the penalty be for not behaving in that way? We don't believe that co-operation/collaboration can be legislated for in the way suggested by the document.
- We agree that the railway should be run 'in the public interest'. The legislation will need to address how this will be defined. For example, too great a focus on reducing costs for taxpayers could lead to reduced customer service offerings and a drive for cheap, inferior products to the detriment of the UK supply chain, safety and quality. Whereas a definition that focuses on social value, mobility and wider economic value would drive investment and growth including providing opportunities for UK suppliers.
- It is unclear from the document how GBR will work with and take account of the strategies developed by the sub national transport bodies and devolved nations. This needs to be clearly defined in the legislation.

Question 2

Are there any other factors Great British Railways should balance and consider as part of its public interest duty? (paragraph 2.9) Please explain.

- The private sector supply chain plays a crucial role across all aspects of the industry and has a vital role to play in ensuring that the aspirations of the rail transformation agenda can be achieved. Companies in the supply chain also contribute to the wider UK economy through the creation of jobs, development of new technologies and the export of goods and services. Much of this activity takes place in the Midlands and North with growing clusters in Wales and Scotland. We would propose that the legislation should incorporate a duty on the SoS to take into account the desirability of a healthy and productive UK rail supply chain when designating GBR and issuing its license, as well as in issuing any subsequent Directions and Guidance. We would also propose that the license require GBR, when examining bids from potential operators of Passenger Service Contracts (PSCs), to take into account the comparative benefits of those bids to the UK supply chain.
- The railway is a national asset that can drive economic growth and prosperity as well as social mobility e.g. linking people to education opportunities and jobs. It has the potential for driving export opportunities and growth for the supply chain by acting as a showcase for new technologies and innovation. The railway also has a critical role in supporting key, strategic industries of national importance. The Covid pandemic and recent Russian invasion of Ukraine has demonstrated the

risks of being over reliant on complex global supply chains. As we look forward into a somewhat more uncertain future the UK needs to be mindful of the implications of other global aggressors and the circumstances under which we may wish to impose sanctions. The impact of sanctions on Russia, for example, is not as impactful to the UK as say sanctions on China. We believe, therefore, that the legislation should go even further enshrining in UK law the need for a minimum % of UK content (by value added) across all rail activity to ensure the security of a key piece of national infrastructure. This is particularly important for suppliers into rolling stock who are frequently overlooked due to approved supplier lists being managed by overseas based procurement people. This approach would counter existing protectionist practices prevalent in certain EU states and other export markets. UK government has recently demonstrated its willingness to act in sectors of key strategic importance e.g. preferred status for UK suppliers to Oneweb.

- Growth potential for SMEs and start-ups should also be a factor where GBR could act as a catalyst for rapid scaleup and deployment of new technologies.
- Whilst we recognise that one of the key purposes of the document is to consider the legislative changes to enable GBR to contract for passenger services contracts; there is little to no reference to freight. Passenger services cannot be looked at in isolation and the role of freight together with its potential growth needs to be hard wired into the thinking of GBR from the outset.
- The consultation states that the license will include “.....a duty to act in a manner it considers maximises the social and economic value (as defined by the Secretary of State)....”. The legislation will need to be clear on the application of the Social Value Act and planned new Public Procurement legislation to ensure there are no conflicts or contradictions with the SoS’s definition. The legislation should be written to enable and facilitate procurement professionals to take sensible decisions without risk of legal challenge. The current situation leads to procurement practices that stifle innovation and exclude SMEs; as contracting authorities seek to protect themselves from such challenges.

Question 3

Do you support the proposal to include a power in primary legislation to enable Scottish and Welsh Ministers to delegate their contracting authority to Great British Railways, subject to the terms of delegation being mutually acceptable to ministers in the Devolved Administration(s) and the Secretary of State? (paragraph 2.17) Please explain.

- Yes. However, paragraph 2.15 states ‘most powers and responsibilities held by the SoS ... will transfer’. Careful consideration will need to be given to what powers won’t transfer to ensure no conflicts with other legislative requirements are created.

Question 4

Do you have any views on the proposal to amend Section 25 of the Railways Act 1993 to enable appointment of a public sector operator by Great British Railways by direct award in specific circumstances? (paragraph 2.18) Please explain.

- We believe the legislation needs to be transparent about who can decide and in what circumstances if a direct award to a public sector operator is the right way forward
- Para 2.18 refers to the franchising policy statement. This will presumably be superseded by a concession policy statement? The legislation will need to take account of changing terminologies to avoid confusion.

Question 5

Do you support the proposed amendments to Regulation 1370/2007, which are i) reducing the limitation period for the challenge remedy, ii) introducing a remedy of recovery to accord with the new UK subsidy regime, iii) clarifying who may bring a claim, iv) retaining the ability to make direct awards under Article 5(6), and v) clarifying the PIN notice period? (paragraph 2.20) Please explain.

- Yes

Question 6

Do you support the proposed statutory duty on ORR to facilitate the furtherance of Great British Railways' policies on matters of access and use of the railway, where these have received Secretary of State approval? (paragraph 2.38) Please explain.

- We are concerned that the proposals could undermine the role of GBR as a guiding mind. As written, the document suggests that the SoS can approve access to the network with ORR facilitating that access without any reference to GBR – yet GBR will be accountable for the network and is supposed to be the guiding mind. In addition, GBR would be held accountable (and potentially prosecuted) by ORR for any H&S breaches.
- 2.29 states that access charges will continue to apply to all operators. In a business model under which there is a single railway P&L and where operator contracts will be let by GBR is this necessary? Continuation of access charges removes an opportunity for simplification and creates barriers/conflicts and additional administration. In addition, the continuation of access charges could drive the wrong behaviour in relation to the changes required to achieve the desired improvements for customers. We acknowledge however that other types of access would still require a charging mechanism e.g. freight and open access operators. Notwithstanding the above comment, paragraph 2.32 then creates a team which is looking at this issue and which may recommend change. The legislation will need to take account of the findings and

recommendations from this work so the timing of when it will report is crucial.

- We are unclear on the proposal in paragraph 2.30 which could be interpreted that the SoS will approve GBR's policies. If the 'approval' is in relation to matters of access this would seem sensible, however, if the 'approval' refers to GBR's policies then it would not be consistent with GBR being the guiding mind and it would move accountability from the GBR leadership team to DfT / SoS which also has specific implications in existing Health and Safety legislation.
- We would suggest that the remit for the commission being established in paragraph 2.32 and outlined in 2.34 should also include facilitating co-operation on train fleets and modernising working practices / sharing of workforce for example in emergencies.

Question 7

Noting we will consult separately on the use of the power to amend the existing Access and Management Regulations, are you aware of any immediate essential changes that are needed to these Regulations to enable Great British Railways to deliver its guiding mind function? (paragraph 2.44) Please explain.

- We are not aware of any immediate issues.

Question 8

Do you agree with the proposed recasting of ORR's competition duty to better reflect public sector funding? (paragraph 2.49) Please explain.

- The private sector currently invests significantly in rail with scope for even greater investment. Paragraph 2.49 proposes that the regulator gives 'due consideration' to the scale of public money involved when making decisions. Care needs to be given to ensuring the drafting of this proposal within the legislation to ensure it does not have the unintended and undesirable impact of discouraging private sector investment in the industry. Private sector companies make choices about which sectors and which countries they will invest in – we want to make the railway simpler and easier to use for customers and we should adopt a similar mantra to encouraging private investment.
- The proposed duty could have the impact of putting ORR under undue pressure by government to allow access in order to reduce the need for public finance. This could have material impacts on H&S and could undermine GBR's role.

Question 9

Do you support the proposal to include in legislation, a power for Great British Railways to issue directions to its contracted operators to collaborate with one another in circumstances where doing so could otherwise give rise to concerns under Chapter I of the Competition Act 1998, in particular, where this could lead to defined benefits to taxpayers and/or passengers? (paragraph 2.54)

- Yes. We would also add that in paragraph 2.52 and 2.53 the definition of partners should include the supply chain. The provision should include for appropriate financial compensation as appropriate for the direction being given otherwise it could drive the wrong behaviours. For example, operators being directed to 'do something' without financial recognition could result in them making the least impactful financial decision for them rather than what is best for the customer.
- Thought needs to be given within the legislation to managing the transition period during which time there will potentially be passenger service contractors, responsible to, and under the direction of, GBR alongside incumbent operators still operating under the current National Rail Contracts and responsible to DfT. Will GBR be able to also issue direction to those operators working under National Rail Contracts?
- Similar to the bullet point above, the legislation will need to address the potential public ownership contracting models in Scotland and Wales.

Question 10

Would Train Operating Companies be willing to share information and collaborate in the way envisaged without the proposed legislative provisions? What are the risks to them without the proposed legislation? Would the proposed legislative approach help to resolve these risks?

- We believe train operating companies are in a better position to directly respond to this question. However, we would add that the legislation must protect individual companies from inappropriate sharing of commercially sensitive information and supplier owned intellectual property and drafting should ensure no conflicts with existing commercial confidentiality laws.

Question 11

Are there any particular additional safeguards (in addition to the safeguards outlined in paragraphs 2.54 - 2.55) that you consider necessary to support the interests of third parties (including freight, open access and charter operators) or to otherwise protect passengers and/or taxpayers?

- Based on the content of the consultation document we are unclear where and how passenger compensation issues will be addressed.

Question 12

How should we ensure that Great British Railways is able to fulfil its accountability for the customer offer while also giving independent retailers confidence they will be treated fairly? (paragraph 2.61) Please explain.

- This is an issue on which Transport Focus may be best placed to provide oversight

Question 13

Does the proposed governance framework give Great British Railways the ability to act as a guiding mind for the railways, while also ensuring appropriate accountability? (paragraphs 3.13) Please explain.

- No. Paragraph 3.6 states there will be a clear separation between government and GBR but paragraph 3.4 implies DfT will still set strategy. The document is very confused; with mixed messages regarding GBRs strategic vs day to day operational role. The difference between policy, strategic vision and the actual strategy for the railway needs clarification.
- A clear set of clear definitions explaining who is accountable for what is required.
- Stating in paragraph 3.8 that the SoS will have powers over senior appointments does not give confidence that GBR will be independent/arm's length of government. The only appointment that the SoS should have a role in is the appointment of the Chair of GBR.
- The legislation should not, in our view, define the detailed structure of GBR. Setting out that there will be 5 regional divisions and even stating there will be a devolved structure does not provide GBR with the ability to decide for itself what its best structure should be. How can GBR have a guiding mind for the whole railway when legislation dictates how it will be structured? Over time the organisation needs to be able to evolve and adapt to meet the needs of its customers.
- Paragraph 3.12 states that there will be a 30-year strategy which will form part of the governance structure. The legislation should consider how this strategy will be adapted to suit changing circumstances and updated on an ongoing basis. Consideration also needs to be given to how the strategies set by Scotland and Wales will be incorporated into the 30-year strategy and how the strategies developed by England's sub-national transport bodies will be adopted / taken account of.
- Paragraph 3.13c provides for direction by the SoS – this should be limited to very specific circumstances e.g. times of national crises. Otherwise the 'guiding mind' principle is undermined.
- Paragraph 3.13d commits to continuation of the five yearly control period principle. All the current evidence highlights that the five yearly process creates peaks and troughs of work which in turn impacts on the supply chain's potential to reduce costs, improve productivity and invest in skills and technology. A move to a rolling five yearly process would alleviate at least some of these problems.

- The requirements set out in paragraph 3.16 could lead to significant conflicts – who will enforce this duty? If ORR are required to further rights of access this is a direct conflict of interest for ORR.
- The legislation will need to make a clear distinction between ‘access rights’ for those requiring access to the railway and ‘accessibility’ for passengers. Interchangeability of access / accessibility could create confusion and unintended requirements in the new legislation.
- Including too much detail in the license could stifle change and improvement (paragraph 3.27).
- We do not see how behaviours can be governed by a license – behaviour and culture are a matter for leadership not legislation.
- Paragraph 3.19 says the license will define the core functions of GBR and how these will be delivered. The license should focus on the ‘what’ not the ‘how’ – the decisions on how should sit with GBR.
- Under paragraph 3.22 the legislation needs to be clear whether the license is issued by DfT/SoS or ORR. If it is issued by DfT then ORR should not be able to amend it – they would make recommendations to the issuing body. If ORR issues the license it makes GBR subservient to ORR direction.
- As the detailed legislation is drafted it will need to clearly define who will be responsible for license enforcement in the devolved nations; this is especially the case if it could change existing devolved powers.
- The legislation must be explicit that GBR either does, or does not, need to make ORR aware of any actual or potential license breaches.
- In our opinion ORR will be placed in a compromised position and cannot be considered independent in this new structure. As such they cannot be considered an independent decision maker on whether GBR has breached or is at risk of breaching its license condition; that decision would lie with the courts.
- Whilst we recognise that the SoS needs to have the power to direct GBR under certain circumstances these should be clearly defined otherwise it leaves the door open for greater control/micro-management by DfT. The legislation should be clear about who would pay for any additional requirements imposed on GBR by the SoS.

Question 14

Do you agree with the proposal for Great British Railways’ new duties to be captured in the licence and that primary legislation should require the licence to include specific duties in relation to accessibility, freight and the environment? (paragraph 3.16) Please explain.

- Yes

Question 15

Do you support the proposal to amend ORR's powers to exclude the ability to impose a financial penalty on Great British Railways for licence breach? (paragraph 3.26) Please explain.

- If the ability to fine GBR is removed then the legislation must address what sanctions/penalties could be applied. Will ORR have the power to sanction individual members of the GBR Board?

Question 16

Please provide any feedback on the proposed business planning arrangements for Great British Railways.

- We do not believe that proposals in paragraph 3.34 will deliver the clarity required, and that DfT say they want to provide, for the supply chain. Five yearly settlements lead to several issues including:
 - Peaks of workload for procurers and suppliers producing and responding to contract opportunities.
 - Typically, low workloads in years 1 and 5 of the control period with higher workloads in the middle years. This situation has persisted across multiple control periods regardless of all the 'good intentions' of changing things. This is at least in part because it is a fundamental symptom of five yearly fixed periods.
 - Huge uncertainty from year 4 onwards in relation to future workloads and contract awards. Why would a supplier recruit apprentices in year 4 if they have no assurity of work beyond the next few months?
 - We have attached our recent piece of research into the impact of hiatus of work between control periods to demonstrate the problems created by the fixed five-yearly periods. (Separate pdf document).

The establishment of GBR provides an ideal opportunity to improve the current arrangements. We would propose that consideration be given to moving to a rolling 5 yearly approach with staggered contracting strategies.

- A further consideration is that GBR will bring operators into this mix, albeit the duration of concessions is as yet unclear we assume they will be significantly longer than previous franchises. How will GBR be able to plan for a passenger service contract that is due to expire in e.g. year 6 if their planning is based on fixed 5 yearly periods? Furthermore para 3.36 states that there will be separate funding processes for infrastructure and passenger services. If we are to truly align track and train with decisions based on an integrated system approach the two planning processes should be aligned. As an example, discussions relating to types of rolling stock on certain lines are directly linked to which of those lines are/will be electrified and when – the two cannot be planned, or budgeted for, in isolation.

- Paragraph 3.36 states the RNEP will be managed separately. This is not consistent with the concept of the industry having a 30-year strategy and a long-term plan. The legislation should, in our view, provide for GBR to manage the RNEP.
- We are unclear how the periodic HLOS and SOFA (including those covering Scotland) will align with the 30-year strategy.
- We are also unclear of the role of the devolved transport bodies in the planning process. Some devolved bodies have statutory powers which the legislation needs to take account of but regardless of this how will sub national transport strategies be taken into account?
- Paragraph 3.40 feels like a missed opportunity to simplify and clarify who is responsible for what.

Question 17

Will the proposed approach to independent scrutiny and challenge provide sufficient transparency and assurance that Great British Railways can be held to account? (paragraphs 3.45 – 3.47) Please explain.

- It is not clear how ORR will hold GBR to account if there is no penalty for failure. For example, could GBR lose its license?
- We do not believe that a Rail Ombudsman sponsored by ORR is truly independent. In a simplified railway is there a specific need for two bodies – the Rail Ombudsman and Transport Focus? Clarity is needed on what specific value each one brings.
- Paragraph 3.47 misses the opportunity to remove duplication and hence cost. GBR and ORR do not need to report on the same thing.
- The legislation needs to be clear on the respective roles of the ORR, the Rail Ombudsman and Transport Focus as there is significant potential for duplication and confusion across the bodies.

Question 18

Do you support the proposal to give ORR a statutory power to levy a fee on Great British Railways to cover the costs of ORR's functions which are currently funded through the network licence? (paragraph 3.48) Please explain.

- No – this totally compromises ORR's position. The enforcer should NOT be directly funded by the organisation it is overseeing.

Question 19

Will the proposed changes enable Transport Focus to effectively undertake the role of independent passenger champion in the new rail industry structure? (paragraph 4.8) Please explain.

- We are not convinced of the value of these proposals. We do not see the need for multiple layers of organisations that have no authority to hold

anyone to account. Furthermore, if we need this for passengers who is undertaking the equivalent role for freight customers?

Question 20

How can we ensure that accessibility is integral to Great British Railways' decision making and leads to cultural change in the rail industry? Please explain.

- We believe that this should be built into GBR's 30-year strategy and business plans. We feel strongly that culture change is driven by leadership not legislation. If the legislation puts binding requirements into the license DfT must ensure that funding is available otherwise other projects could be side-lined to pay for accessibility.
- Paragraph 4.14 and 4.15 create a duplication of roles across ORR and DPTAC. The legislation needs to be clear on who is responsible for what.

Question 21

Do you support the proposal to expand DPTAC's remit to become a statutory advisor to Great British Railways, as well as to the Secretary of State, on matters relating to disability and transport? (paragraph 4.15) Please explain.

- Another statutory adviser to GBR means they will be "pulled from pillar to post" even more. The Plan for Rail is meant to create a simpler railway. The proposed legislation is in danger of creating an organisation that makes knee jerk decisions to meet multiple differing demands which will severely hinder the delivery of the long-term strategy. This will have a direct impact on the ability of the supply chain to deliver the productivity and cost improvements sought by government.

Question 22

In addition to providing Great British Railways with powers to make "permitted information disclosures", are there any other revisions to the Railways Act 1993 or barriers to promotion of open data that you consider need to be addressed? Please explain.

- Whilst we fully acknowledge the need for 'open data', paragraph 4.20 raises significant concerns in relation to potential breaches of commercial confidentiality and intellectual property.
- The legislation needs to provide safeguards in relation to commercially sensitive data and intellectual property of operators and third-party supply chain companies. An unintended consequence of 'open data' could be to stifle innovation. If a company sees their intellectual property being taken and then used in an open market situation and reduce a company's ability to sell their competitively advantageous products and services into other markets – both UK and export.

Question 23

Do you support the proposal to include a power in primary legislation to enable the ratification of the Luxembourg Rail Protocol? Please explain.

- Those companies specifically impacted by the protocol are best placed to respond to this question.

Question 24

Are there impacts or risks of the policies proposed which have not been covered by the impact assessments? Please explain or provide evidence.

- Great British Railways: Our key observation is that under this Impact Assessment there is no reference to the impact of the proposed policies on the UK supply chain. The UK supply chain is a vital and integral part of the railway system and the legislation has scope to support its growth or stifle its future development.
- Data: Please see response under question 22 above.

Question 25

Do you have evidence relating to the impacts and risks identified and discussed in the impact assessments? Please provide it to us.