



HOUSE OF COMMONS

Transport Committee

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

Wednesday 22 May 2024

Ordered by the House of Commons to be published on 22 May 2024.

[Watch the meeting](#)

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

Questions 328–380

Witnesses

[III](#): Huw Merriman MP, Minister of State, Department for Transport; Conrad Bailey OBE, Director General for Public Transport and Local Group, Department for Transport; and Alex Hynes, Director General for Rail Services, Department for Transport.

Written evidence from witnesses:

- [Department for Transport](#)



Examination of witnesses

Witnesses: Huw Merriman, Conrad Bailey and Alex Hynes.

Q328 **Chair:** I welcome the final panel in our pre-legislative scrutiny of the draft Rail Reform Bill. Before we get into questions, Minister, I ask you to introduce yourself and your team for the record.

Huw Merriman: Good morning, Chair and members of the Committee. I am Huw Merriman. I am the Rail Minister. I will leave Conrad and Alex to introduce themselves.

Conrad Bailey: I am Conrad Bailey, the director general for public transport and local within the Department for Transport.

Alex Hynes: Good morning. I am Alex Hynes. I am the director general of rail services at the Department for Transport.

Q329 **Chair:** Thank you. We are very grateful to all of you for your time this morning.

We are doing pre-legislative scrutiny. Before we get into detailed questions about the Bill, how open are the Government to changing the content of the Bill from its current draft form?

Huw Merriman: First, I thank you and the Committee for the work that you have done to date, in such a short period of time. We are really grateful. We were keen for you to be given this area of responsibility because of your interest and expertise. We want to place our thanks on record.

Of course, we are completely open to the views and recommendations that you may wish to put forward. I have heard a number of them already. We will give them the consideration that you would expect, even more so because it sets the framework in the future for how rail will operate under this new set of reforms. We are certainly open to any recommendations that you may wish to pass through to us.

Q330 **Chair:** Thank you. Could you set out the Government's broad timetable for how we move forward? This Committee will produce its recommendations as swiftly as possible, and we certainly hope to do so this side of the summer recess. Once we do that, what are the Government's next steps and when can we hope to see full legislation introduced?

Huw Merriman: To a certain extent, it depends on what you recommend and what we then go back to you on, because there would usually be a two-month period for us to respond to your recommendations and to either accept or, with reason, reject; indeed it may be somewhere in between the two. In the event that you made recommendations that we felt would improve the Bill, we would have to go through a process of agreement through Government, which can sometimes take a little longer than the two months. I am not seeking to avoid the issue.



If you made no recommendations to us to alter anything at all, we would certainly get back to you within the two months, and then, from our perspective, we would view it as having received parliamentary scrutiny, which we always said should allow it to speed through as legislation, which would then allow us to bid at the earliest opportunity for a legislative slot.

Q331 Chair: You have previously said that you would like to see full legislation introduced before the election. Given that we are now within six months or so of that election, is there a realistic chance that it could happen?

Huw Merriman: It is incredibly challenging to see that occurring. Every day when the bell rings for the Adjournment much earlier than we would normally expect, I always think of this legislation. That shows the desire I have to put it down as early as we possibly can. I know it is very optimistic, but I still work on the basis that if it is shown to have support from this Committee and then feeding in through the House of Lords, and the cross-party nod that we have right now in Labour's own plan for rail, which is not that far away from what we are putting forward on the IRB, I would like to hope that it could start its journey, but I am aware of how near an election we are, so a dose of realism is probably required.

Q332 Fabian Hamilton: Minister, the draft Bill would give the Secretary of State the power to issue directions to the IRB. Why is that necessary?

Huw Merriman: I should say from the outset, because it neatly demonstrates how we as a Department are seeking to move, that we would not be making these changes if we did not want to pass operational day-to-day responsibility over to GBR. We do not seek to control; we seek to pass that over. Conrad is running the team that is going to look more on the strategic side of the railway, which is where the Secretary of State would be looking. Alex has come in with his experience from Scotland and has already merged two existing Government Departments, track and train, effectively, in order to be what you described as the "lift and shift" part, which would come out of the Department and over to GBR. We are already creating the internal structures that allow the Secretary of State to continue his role within the IRB, and, more importantly, to allow the day-to-day operational functions, too much of which currently sit with the Department, to be moved over to GBR, and that is very much Alex's job. They will both be able to talk to that, and I invite you to ask them.

In terms of the Secretary of State's responsibility, the Secretary of State will be the sole shareholder for GBR. The Secretary of State will be able to set the five-year strategy for the funding and then the high-level specification, which is exactly what happens with the five-year control period for Network Rail. The Secretary of State will ultimately be responsible and accountable to Parliament for the operation of the overall railway piece. I don't think any MPs are going to pull back and say, "Okay, Secretary of State, you're not responsible. We'll wait for the



HOUSE OF COMMONS

accounting officer from GBR to come before us.” That will still be there and, I believe, it will still be required.

Mr Hamilton, I will give you one example. What happened under the 1993 Railways Act and Railtrack was a good example of where things were set free, away from Government, and I do not believe it worked. A change was made. Railtrack was then, effectively, brought back in Network Rail. The five-year review period and funding was then put in place with accountability for the Secretary of State. I believe the railways are in a much better place as a result. They are certainly a lot safer.

There is still a role for the Secretary of State, but let me be clear: operational day to day will be for GBR. The Secretary of State will still have a role to play in the accountability that Parliament expects the Secretary of State to be responsible for with regard to the railway. I agree that where you put the mark in the middle is the important bit.

Q333 **Fabian Hamilton:** You believe that it will be quite clear who is accountable for what.

Conrad Bailey: I want to expand slightly on how we see the direction and guidance working. We would expect the Secretary of State, or indeed potentially GBR if it believed it required direction, to consult with GBR, the ORR and other interested parties that may be relevant, such as the devolved Administrations, before a direction or guidance was issued.

At the point it is issued, in order to ensure there is real transparency and you can see flow-through from the licence and the business plan that I know Lord Hendy and Andrew Haines talked to you about, we would expect that to then be published so that there is transparency around how it works. In designing that power, we looked carefully at other bodies that you want to be remote from Government, where typically they ensure that the Secretary of State has that power, particularly when they are of national interest and an area where there is significant taxpayer funding.

Q334 **Fabian Hamilton:** Can you give us an example of the circumstances in which you would envisage using the power of direction?

Huw Merriman: I would give the example of the timetable change, potentially. If you look at matters at the moment with regard to changes of the timetable, they can only take place on the second Saturday in December, and that causes a lot of issues because the run-up to Christmas is not the ideal time to be changing a timetable. We talked yesterday with Andrew and Peter about the timetable process. It would require some form of amendment through the 100 pages of railway legislation. If the Secretary of State did not have the secondary legislative powers that we envisage, we would have to wait for a primary legislative slot, which is hard to get for the reasons that we touched on right at the start of this session, in order to change the way we can operate a timetable review.



That timetable change is one that we are looking at right now. In order to be nimble and to be able to keep the record book in terms of legislation up to date in a speedy and efficient manner, I believe the powers, with the countervailing checks and balances that Conrad mentioned—there will be a consultation requirement and a requirement for an affirmative process through Parliament—will allow the railway to be moved on, giving powers to GBR to be able to look towards the future and change, but at the same time with enough checks and balances and accountability in the parliamentary process.

Q335 Fabian Hamilton: We have heard during these hearings some concern that the unfettered nature of the power to direct runs the risk of creating uncertainty among stakeholders, including potential investors, of course. How would you seek to reassure them?

Huw Merriman: I appreciate it is about getting that balance right. While I can say that it is our intention, as demonstrated by the way that the Department has restructured itself and the fact that we are putting through this change for rail reform, to take the operational running of the railway outside the Department, I appreciate that Governments can change, and therefore it is the powers one looks at rather than the prevailing desire and culture.

I hope both Conrad and I have listed examples of where we would see those changes made either by regulation or by guidance. I heard the points that Fiona Hyslop made, that we would seek to consult with the devolved authorities where it would have a material impact on their own powers and all the other sets of checks and balances. Obviously, if the Committee feels that it wants to recommend further ideas in that space, we would look at those.

Q336 Fabian Hamilton: Thank you, that is very helpful.

Minister, the Secretary of State's power to modify the IRB's licence, as you know, is a broad one. We have heard that it has the potential, as I said earlier, to create some uncertainty among stakeholders. What are the circumstances in which you would anticipate modifying the licence?

Huw Merriman: The licence requirement is set down in the legislation. The actual licence content is a developing body that, once it is out there, will be put out to consultation. That is not a current document that is going to come in as an annex to the rail reform legislation; it just enables it to start its process. The consultation process for the licence will be full and open in that regard. Of course, there will then be a whole series of checks from the ORR, which will have certain specified and defined areas that it will govern, such as freight, environment and accessibility. We are trying to increase its scope as far as that is concerned. Conrad and Alex, do you want to come in on that?

Conrad Bailey: We would expect the draft licence, as the Minister says, to be properly consulted on. We would expect it then to be, in all likelihood, reviewed on a five-yearly basis linked to the business planning



cycle. Adjustments could be made where necessary subject to consultation. When and if there were requirements for changes to the licence in that period, perhaps because the ORR needed to make some adjustment, and something had changed so that it was no longer deliverable, we would expect a similar process.

Q337 **Fabian Hamilton:** When would we be likely to see a draft licence?

Conrad Bailey: We are not yet in a position to publish a draft licence and consult on it. Typically, for other bodies where similar licences have been produced, once it is clear what the views of the House are on the legislation you can consult on the licence; if, for example, there were amendments to the legislation we might need to reflect those in it. Once that was clear, we would expect consultation to take place so that it came into force at the point when the new body was set up. There is a sequence that we need to follow, including having clarity on what the legislation is, in terms of consulting, effectively, on the licence.

Q338 **Fabian Hamilton:** Would this Committee be able to scrutinise that draft licence before it became an actual licence?

Huw Merriman: I would certainly expect that to be the case, and would welcome it. It is a bit chicken and egg because the legislation itself starts the process of the licence and puts it into legislation. The content of the licence is a separate agreement that, as Conrad says, is open to consultation. We would very much expect and welcome this Committee's recommendations. If there is anything you feel we should be thinking about in terms of the content of the licence, we are very happy to do so. The reassurance is that, if there are additional powers that GBR ends up moving into, it will need fresh licence conditions in order to do that because that is a requirement of running the railways.

Q339 **Fabian Hamilton:** This is my final question, Chair. How do you reassure those who have concerns about the interference by the Secretary of State in the running of the IRB?

Huw Merriman: In a number of ways. First, there is an awful lot of interference right now from the Department for Transport in the operational day-to-day running of the railway. That would change. That is why this legislation is before you. That is why GBR is being set up to take away the operational day to day from the Department for Transport. Then there is the question of the ability for directions and guidance. That is a required way to ensure that the legislative record book is kept up to date, but in a speedy manner that allows GBR, if it approaches the Department and wants to change the timetable idea that I gave you, to make sure that can be done. For all the other checks and balances that are needed in case someone decides to meddle and interfere and do things differently from how our culture is being set, there is the requirement to consult and there is the requirement to engage with those bodies that may believe they have powers that are there as well. Then you have the ORR overarching regulation and guidance.



HOUSE OF COMMONS

I believe there is a right role. The Secretary of State for Transport of any Government who are elected should have the ability to take account and be responsible for the railways, which means that they have to have certain powers if they are to be held to account.

Fabian Hamilton: Our previous witnesses agreed with that. Thank you very much, Minister.

Q340 **Chair:** I have a supplementary on that. We heard some evidence and argument that people accept that, ultimately, the Secretary of State should have the right to intervene, but there should be on the face of the Bill some framework that sets out the circumstances, so that it is a strategic intervention rather than a day-to-day operational one. Do you think there is some merit in that argument?

Huw Merriman: Given that we believe that the day-to-day operational responsibility should be outside the Secretary of State and the Department, logically I would agree with that. I understand that the aim of your work is to look beyond different Governments and different cultures and ensure that powers cannot be used in a manner that would not be appropriate. I understand the ethos, because if I were to say I did not it would seem to suggest that we are not really serious about giving up day-to-day operational responsibility. I am happy to read your recommendation in that sphere.

Q341 **Chair:** We have not decided as a Committee if that is what we will recommend, but it is certainly an argument that was put to us by several witnesses.

We have talked about the licence. I would like to turn to the business plan that the IRB will be required to publish. The Bill does not contain any timeframes or conditions about consultation. It can change the business plan as it wishes. Is that the right approach, or should there be, on the face of the Bill, some conditions about the adoption of a business plan?

Huw Merriman: I equate it, as I did earlier, to the process where we have a five-year control period for Network Rail and a five-year plan in place. The plan is initially determined as to how the high-level output specification and the statement of funds available will operate, and then the plan is put forward in that regard. I think it works rather well with regard to the control period. I would be keen to ensure that we do not have a lag as one five-year period ends and another one starts. We have all heard about those before, not least in this Committee.

I believe that it works in that regard. It takes into account the spending periods that we have, which are outside those windows as well. We also have the annual report on the private sector to look at things on an annual basis. I would expect it to be on an iterative basis. By drawing all of track and train operations together, I would expect that you had the ability to be able to plan ahead for five years because you were bringing passenger services into that sphere as well. There is a lot more that you can set out in advance. I am comfortable with it as it stands, but I am



HOUSE OF COMMONS

happy to take any views to the contrary that this Committee may have. Do you want to come in, Alex?

Alex Hynes: Network Rail currently undertakes a business planning process every five years in a highly consultative, transparent way, and I am sure Great British Railways will do exactly the same. The key win is the fact that it will be an integrated business plan covering track and train, which is a huge step forward in creating a more coherent railway across Britain.

Conrad Bailey: And it will be assured by the ORR, as you see in the current control period process.

Q342 **Chair:** On the IRB's power to award franchises, it "must have regard to a statement of policy from the Secretary of State while exercising that power." What happens if the IRB rejects what the Secretary of State has suggested?

Huw Merriman: I haven't considered that particular part. We envisage that in the new passenger service contracts we would try to bring back some competition in the awarding of contracts. We are working on the basis that there will be a proper tender process, which can take time to put together, and then those contracts will be put to the market. That would be the private sector, as would be envisaged here, and then the successful bidder would be selected by GBR. I would not expect the Secretary of State to be involved in that part, not least because the contracting powers under this legislation have been transferred away from the Secretary of State, so there is no attempt to try to backdoor and intervene.

Alex Hynes: It might depend on whether it is directions or guidance because the impact would be different. The network licence for Great British Railways, which will be regulated by the ORR and granted by the Secretary of State, will set out some of those things.

Huw Merriman: There won't be the staff, because Alex will have lifted the staff out. At the moment, as you know, per train operator, there are an awful lot of staff in DFT to help with the business planning process and the decision making. That will all be transferred over to Great British Railways, so there will not be the means or the expertise to be able to check the homework.

Q343 **Jack Brereton:** I think you heard earlier in the previous panel that we were talking about private involvement and trying to encourage more private investment into both the operation and the infrastructure of the railway. Obviously, there is a duty for the IRB to report annually on increasing involvement of the private sector. What was the intention behind that? Do you think it will be effective in getting more private investment into the railways?

Huw Merriman: Yes. I listened to your questioning previously, Mr Brereton. I have been through it before as well over the years. It is



HOUSE OF COMMONS

something that Andrew and Peter always answer with great reassurance. I know that there is concern that this is a sort of Network Rail/state takeover, when, in fact, it is designed to be the complete opposite. It is designed to help Network Rail have a more commercial culture and ultimately to integrate track and train to make it more efficient for the passenger.

We recognise that there is concern about the crowding out of the private sector. That is an example of where we are seeking to put our culture into the content of the legislation, having an annual review where there is a requirement for GBR, as reviewed and regulated by the ORR, to be able to demonstrate how it has allowed the private sector to grow. It then puts that culture on the side of the tin in that there is a requirement not just to work with the private sector but to grow it as well.

I will give you the example that I mentioned before—the new passenger service contracts. That is where I would dearly love to see contracting go out to the market, because rail operators can grow passenger services and make money from that themselves. Ultimately, that is great for the taxpayer because we will get a greater return and the passengers get a greater timetable and we have an element of competition that we have currently lost. That is exactly why we have put all of the passenger service part into GBR—so it can do that.

Q344 Jack Brereton: We heard from Lord Hendy about the need perhaps for more longer-term plans, as well as the five-year business plan, to encourage private investment in infrastructure as well. Is there scope to allow longer-term plans to be developed so that they will attract more of that private investment?

Huw Merriman: Yes. I remember having this discussion early in my tenure when we were talking about a 30-year strategy. I am also conscious of credibility. If we have not delivered rail reform and the integrated rail body and put together track and train and given that platform, people might think it is a bit odd to be talking about an even longer-term strategy when you have not even built the foundations.

I was keen that we did what we are doing and are discussing here, that we had delivered rail reform and delivered the integrated rail body and we had the five-year period in place, which is like the control period. Then there would be the credibility and the foundations for GBR to lead an even longer-term strategy. We know that business likes certainty. I believe that by making these changes we are more likely to see the ability for a credible longer-term plan and a lot more investment because business has certainty.

Q345 Jack Brereton: I want to ask you about the ORR's responsibility to promote competition. This is something that has been added to further develop the responsibility of the ORR. Do you think that it will help to attract more competition and more involvement and choice on our railway?



HOUSE OF COMMONS

Huw Merriman: Yes, I certainly hope so. In the role that the ORR has to play already with regard to open access applications, of which there have been a plethora just in the last week, it is probably fair to say—it was a conversation that we were having with Andrew and Peter yesterday—that we need to change the process. If you have a number of applications coming in on the same line, you cannot look at the first one that comes in; you have to look holistically at all of the options. It needs a bit of a refresh.

It is a positive thing because we are now starting to see more interest in the running of the railways, which I hope will lend itself towards the train operator contracts also having that same element of competition. If the ORR can go into this space and act in a positive, dynamic manner to promote competition and to enable competition through its own processes as well as GBR's processes, it can only lead to a better outcome.

Q346 **Jack Brereton:** Do you think the ORR will be effective at doing that, because it is a much more complex task for them to achieve? I think they have admitted that it is a much more complex change for them to achieve. Do you think they will be effective at encouraging more competition and choice not just for passengers but for freight as well?

Huw Merriman: I believe so. Before I took up this role, I remember having conversations with the ORR, and they were always keen to get involved in helping make better decisions. As well as being the check and balance, how can they lend their expertise, without demarking the correct check and balance lines, to enable better decisions to be made? On open applications, where they ultimately make the decision, there is a lot of work that has to go on between them and Network Rail, which would become GBR, in making that decision.

There is a lot more that can be done. That is no criticism of the ORR as they are now, but this framework gives a good opportunity for them to look at the role that they play, not least because, while at the moment they don't regulate passenger service contract awards, and that would not be the case, the five-year plan involves passenger contract performance, and of course they are responsible for regulating the five-year plan, so they will start to enter that space. It is an opportunity for them to look with positivity and optimism about what they can do to make the railway better. The ORR is a great organisation that has served us well and it can improve.

Conrad Bailey: It is worth saying we have been doing quite a lot of work with the ORR, just as we have with Network Rail, GBRTT, Transport Focus and the other rail bodies. Just as DFT needs to fundamentally change and we have gone on that journey ourselves, at the ORR they certainly recognise that they will need to change and they will need slightly different capabilities and capacities, particularly in the areas that the Minister just talked about, and they are very alive to that. We have been



HOUSE OF COMMONS

talking to them about how we will make sure that happens and support them on that journey.

Q347 Grahame Morris: I would like to come back to the point that the Minister raised about passenger service contracts with Conrad Bailey, but I want to pick up on one point about the franchises and remind the Minister of evidence that he gave on a previous occasion to the Committee when we talked about the advantages or otherwise of privately run franchises as opposed to the directly operated services. We know there are seven franchises in the public sector, three in the devolved nations and four in England, and I think three of them are in my region.

The last time you appeared before the Committee, Minister, you said you were not focused or dogmatic about one particular system or the other, private or public. You said, "I am focused on the performance and the turnaround." You went on to say, "It is interesting that the performance across their stable"—the directly operated services—"on every single one of their four operators has gone up, if you look at June and July's performance." Yet within the terms of the draft Bill that we are scrutinising there is no provision for a permanent public sector operator. In fact, it is specifically excluded under the terms of the 1993 Act. On reflection, do you think that is an omission, or something that we should be addressing?

Huw Merriman: First, I will always support and stand up for all the train operators regardless of whether they are open access, private TOC or in the operator of last resort, because all their staff and their management work hard to give a better return for the passenger. I am happy with those words, Mr Morris, because that is what I hope I would say about all the passenger operators.

Our plan is for the new passenger service contracts to be developed and then put out to the market by the IRB. They would be put out to the private sector to bid, and one would expect to see the best bid for the taxpayer and the passenger take those contracts on and have enough longevity to be able to invest in those services as well. That is the model we have. It is not a model that says that once the contracts have come to an end they can be directly awarded to a nationalised operator. That is not the way that we foresee the railway running in the best manner.

Q348 Grahame Morris: That is interesting. I appreciate your candour. The reality is that, because of the way the system is set up and the way the draft legislation is drafted, it places a duty on GBR to report on what it is doing to promote the private sector's role in rail. Even for the most successful directly operated services it is only a temporary arrangement, isn't it? GBR would be under political instructions to privatise them or to offer the contracts at an early opportunity.

I wonder if we are not being dogmatic. This is about improving the experience for passengers and getting a good service and value for



HOUSE OF COMMONS

money for the public. Why is it that we exclude the British state from running services and franchises when 70% of those currently operated are owned wholly or partially by foreign states? Is that not discriminatory?

Huw Merriman: I don't seek to discriminate against countries around the world. By its very definition, that is not discriminatory.

Q349 **Grahame Morris:** It is discriminatory against us.

Huw Merriman: I don't have any issue with international trade coming to this country and creating jobs. Of the three train manufacturers that we have brought into this country—one very near you—one is from Japan, one is from Spain, and one, Siemens, is from Germany/Austria. We welcome our international friends to this country to create jobs and GDP for the country. I am completely open about that and I want to see even more of it.

Coming back to your point, the aim for us is to integrate track and train. I will give you a good example where it works well. Passenger performance is at its highest in East Anglia where there are two train operators—Greater Anglia and c2c—and the Network Rail team. They have fantastic records. That is a good example of where the private and the public sector, working together closely, are delivering a better return for the passenger. That is exactly what integration is all about.

I do not want more state. I am trying to move it away from the state and have the operational day-to-day running of the railway integrated and run by the railway rather than by politicians, because I do not believe that politicians are the best entity to be able to run the railway. Everything I am doing is trying to put it in the hands of the experts and bring in the private sector to be able to grow the railway in a similar manner to how, in the 20 years prior to the pandemic when passenger numbers doubled, we had private sector competition involved.

Q350 **Grahame Morris:** I am afraid philosophically, Minister, we will have to agree to disagree.

Huw Merriman: I thought we wouldn't agree on that one, it is fair to say, but we will always be friends.

Q351 **Grahame Morris:** Like water—we are discussing the draft Bill on rail reform here—I am afraid private is not best, and the customer experience may suggest otherwise. The best railway in the world is in Switzerland. It is the cheapest and most efficient, and it is completely in public ownership.

Huw Merriman: Yes, but, as I said, the best-performing train operators, the top three, are private.

Q352 **Grahame Morris:** Can I ask for one point of clarification? It is a very short one. We had some evidence from the Cabinet Secretary from Scotland who raised a number of quite valid issues about consent and so



HOUSE OF COMMONS

on. Just for my understanding, are the Scottish Government classed as a foreign Government?

Gavin Newlands: Yes. Now you're talking.

Q353 **Grahame Morris:** In other words, under the '93 Act, are the Scottish Parliament and the Scottish Government allowed to permanently run a rail franchise?

Huw Merriman: They are not as foreign as Mr Newlands would like them to be. I can think of no better person to bring in at this point than Alex.

Chair: We are not going into conceptual arguments here.

Q354 **Grahame Morris:** I just want a definition of the '93 Act. Are they allowed to do that?

Alex Hynes: It is my understanding that the Scottish Government's powers were amended by a more recent Act whereby they are allowed to propose a public sector bidder, and that applies in Scotland. I think it was the Smith Act.

Q355 **Grahame Morris:** Will all those powers be overridden by the IRB under the terms of this Bill?

Alex Hynes: No. The Scottish Government already have significant powers over rail in Scotland, both on infrastructure and on train operation, and those powers are protected and preserved by this draft Bill.

Huw Merriman: But the Scottish Government can, effectively, devolve back into the integrated rail body to do the type of tendering of passenger contracts that I just described to you, should the Scottish Government wish to do so.

Q356 **Grahame Morris:** I know we have already had that panel, but the concern of the Minister, who was very articulate, was that they are putting £4.2 billion of their settlement into rail, and they are of the opinion that a Secretary of State, of whichever political persuasion, should not be able to make decisions without the consent of the Scottish Government, which seems reasonable to me.

Chair: We will be coming on to questions about the devolved aspect in a minute, but before we get to that, Gavin has a quick supplementary.

Q357 **Gavin Newlands:** Mr Morris, in one of his final supplementaries, asked one of the questions I was going to ask. Just to come back on the Minister, you made the point about not wanting politicians to run the railways. Nobody is saying that politicians should run the railways. ScotRail is publicly owned and operated and run by professionals like Mr Hynes beside you. It is not about politicians running train services; it is about getting best value for the passenger and the taxpayer. We will come on to that later.



I have a question on private sector involvement. Private investment in the rail system totalled just over half a billion in 2022-23. Public investment totalled just short of £9 billion and £7 billion for HS2. If privatisation and franchising and the last 30 years of marketisation could not push private investment to put in a quarter of that put in by the public purse in the same year even without looking at HS2—take that out of the equation altogether—why would a body, despite what you said earlier, that is slightly closer to the state and seen as an arm's length body bring in extra private capital?

Huw Merriman: Because the ability of some of the private sector counterparts that run our railway—they do so, effectively, on a fee, which they get paid if they perform—to put on more passenger services and take more risk is, effectively, stymied and checked by Government, who decide whether they can do that or not. They are, effectively, paid to run the existing service. The incentive to grow the service, think holistically and do things differently is no longer there in the way that it was previously under the franchise mechanism, where, effectively, they bore an X-year period contract and anything they got that was north of the cost of that franchise was their profit. Therefore, they had an incentive to grow passenger numbers, and indeed passenger numbers grew over that time. That is where we want to see a change. We want to bring in better incentives so that the private sector will use its own balance sheet to invest and be a little more dynamic, more so than it is right now.

Gavin Newlands: Okay, thanks. We will put a pin in the Scottish/devolved issues. We will be back.

Q358 **Chair:** We will be coming back to that in a moment.

Huw Merriman: I deduce from your face that Mr Morris might be cantering over your territory.

Q359 **Sara Britcliffe:** The Secretary of State's power to make regulations for rail markets at clause 8 in the Bill has been criticised by the Delegated Powers and Regulatory Reform Committee in the House of Lords as being a skeleton clause without clear justification. Why is it necessary to legislate in these terms now, and what would you say to address those concerns in the House of Lords?

Huw Merriman: I hope I have touched on this in part, because there will be a requirement to keep the legislative book up to date, not least when the REUL regs end in 2026. There will be a requirement to keep that book up to date. If it is not done in the way that has been described here, it will need to be done in the form of primary legislation. I do not believe that will allow the railway to be nimble enough and give GBR the powers it needs further to develop the railway. It will have to wait for legislation. If the Secretary of State uses those powers, there will be a requirement to consult and there will be the checks and balances inside Parliament from the affirmative procedure. I believe we have got the balance right between the ability to change things, and make changes to allow the



railway to continue to function as it needs to in a timely manner, and the checks and balances that Parliament can provide. Again, if the Committee feels there is a tighter way to do it that does not take away that flexibility and nimbleness, I would be happy to look at it.

Q360 **Sara Britcliffe:** Why do you think the Committee in the House of Lords has such concern that it is a skeleton clause?

Huw Merriman: I guess because, notwithstanding the checks and balances I just described, it is still secondary rather than primary, so in that regard I can understand why. All I would ask the House of Lords to do is to take into account what is good about the running of the railway. I believe that what is good about the running of the railway is the ability to take ideas and suggestions as to how things can be done better, but because they impact on regulation and require changes to be made by the Secretary of State, in return for that there are checks and balances in place when the Secretary of State enacts those powers. During the Brexit period there was always concern about giving the Executive too much control. That is always a concern of Parliament, which is rightly jealous of powers of the legislature over the Executive, but I firmly believe it is in the best interest of the railway to be able to grant those powers.

Q361 **Sara Britcliffe:** The Cape Town convention was signed in 2001 and the Luxembourg protocol in 2007. Why are you legislating on this now?

Huw Merriman: The Cape Town convention effectively brought in this type of flexibility for the private sector to encourage more private sector finance for aviation, and the Luxembourg protocol would do the same for the railway, particularly the financing of rolling stock. This is the only provision in the draft legislation that impacts Northern Ireland, because it allows the Government to legislate for the Luxembourg protocol, to deliver the same benefits and try to get more investment ultimately into rolling stock manufacture, as one can see from the Cape Town convention on aviation.

Conrad Bailey: The Luxembourg protocol came into force at the beginning of March. I think that about 20 countries have signed up to it and four have ratified it. This is really about us ratifying it. The particular benefit of the Luxembourg protocol—I know that some of your witnesses had different views on whether it would bring benefit—is that it provides more certainty and clarity around means of legal redress in the financing of rolling stock. One would expect that to make the UK market more attractive and thus more competitive for rolling stock, so there is a passenger benefit there. Once we have ratified it, it will potentially make UK-based rolling stock companies more competitive in international markets. That is the purpose of it.

Q362 **Sara Britcliffe:** The powers to make regulations implementing the convention and the protocol are quite broad. Why is it necessary that they are so broad?



HOUSE OF COMMONS

Huw Merriman: That would be subject to consultation once the actual protocol is given effect. It is almost a forward-leaning power that is given, but once that power is utilised, it will itself require a consultation process as any legislation would.

Q363 **Sara Britcliffe:** Do you think it could potentially be more specific as we see it coming down the line?

Huw Merriman: I think that flexibility, added to the consultation requirement, once we have the ability to look at how it is being utilised in other parts of the globe that are a little further ahead, will allow us to bring the provisions into effect.

Conrad Bailey: The breadth, which I would argue is only so that you can ratify the Luxembourg convention, is designed to make sure we can also reflect any outcome from consultation.

Q364 **Gavin Newlands:** Before I move on to the devolved situation, would ratification of the Luxembourg protocol mean that the IRB, Transport for Wales or any other body, could potentially sign up, given the financial implications, to EUROFIMA to access finance in that way, or would that require further legislation, secondary or otherwise?

Conrad Bailey: I do not know the answer to that; we would have to write to you.

Huw Merriman: I thought one variant would come up. I asked Conrad whether he would be able to cover that part, but I did not realise it would be that. We will write to you.

Q365 **Gavin Newlands:** If rumours are to be believed, there will be an election called anyway, so this entire meeting is moot.

Huw Merriman: The rumours are around every day. It is like the end of the world.

Q366 **Gavin Newlands:** If we come back to the centre of the universe, Scotland, you may have heard some of the evidence Cabinet Secretary Hyslop gave this morning and that given eloquently by the Welsh Minister yesterday. As Mr Morris has already alluded to, there are genuine concerns, none of them driven by politics, about the operation and what it might mean. Minister, you have already referenced the power to delegate functions in clause 3. Minister Hyslop said that engagement had been very good, so she had no complaints about actual engagement per se. However, what specific engagement did you have before you drafted the power to delegate functions under clause 3? Did you think it would ever be wanted by the Scottish or Welsh Governments, given the feedback we had yesterday and today?

Huw Merriman: I want to state on the record that ahead of issuing any directions or guidance the Secretary of State would be expected to engage not just with the ORR and GBR but the relevant devolved authorities on the use of that guidance or direction. I do not believe there



HOUSE OF COMMONS

is anything that would cause the devolved responsibilities and powers to be watered down. The ability for the devolved authorities to put their own money into the railway remains.

In terms of engagement, we had a really positive meeting with Fiona Hyslop, who is new to the post. I spoke to her predecessor as well. She is quite clearly a person with whom one can engage and do business. As to where I left it with her, I said that if there was anything specific where she felt we could reflect and make clearer our commitment to the devolved authorities having their own powers to do as they wish, and where that might be interfered with unintentionally by another provision, I would happily take representations from her. I know that she has written to the Committee and copied that to us. I am due to meet her shortly, so I will make sure that covers the point for her as well.

Q367 Gavin Newlands: I think you referred to devolution back to the IRB in terms of the franchising power, so we are probably talking hypothetically. To be perfectly honest, it is very unlikely that a Scottish or Welsh Government would seek to do that.

Huw Merriman: They could. I understand that under the existing Scottish Government that is unlikely, but in the event that another Scottish Government wanted to look at private sector competition—

Q368 Gavin Newlands: Heaven forfend.

Huw Merriman: I know that you will be doing everything in your body to make sure that does not occur, but we are trying to build a railway that works without the political choices, if you like. Therefore, it allows that flexibility.

Q369 Gavin Newlands: Looking at that specific function, which was referred to this morning by the Cabinet Secretary, if there was an issue, going back to IRB, and there was a franchise that the Scottish Government, for whatever reason, had very significant issues with, the Scottish Parliament could not revoke that licence or franchise to run the service as it stands. Is that something you have considered looking at when coming forward with the final version of the Bill?

Huw Merriman: Yes. I would not want Fiona to think I was not interested in her proceedings. I came in with Andrew and Peter and I was watching on the screen. I heard her make that point, because the language talks about granting but not revoking. When she made that point it struck a chord with me. We would have to look at that, if it was one of her suggestions or yours, to see whether there was anything further we could do to provide reassurance.

Alex Hynes: If the Scottish Government decided to delegate to GBR on franchising it would have to be on mutually acceptable terms, which would include the award, the monitoring and the situation in which you would revoke the operation of passenger services.



Q370 Gavin Newlands: We should probably apologise to Mr Hynes, because between the Secretary of State in the Chamber and what we have said in the Chamber and what we have said in the hustings we have probably set the expectation level for a civil servant and the sort of job he will do higher than for any civil servant before. Alex clearly has had experience over a number of years in running track and train together, as much as possible, given the current constraints. I think I put it to Fiona Hyslop earlier that we can go only so far on this journey because of the constraints. This Bill allows the DFT fully to integrate track and train in England, but Scotland, which has started the process, will not be able to fully integrate track and train. Given that the Scottish rail network, apart from the few cross-border services, is much more hived off and domestic than the rest of the network, would it not make sense to devolve those functions to allow Scotland to have a fully integrated track and train approach?

Huw Merriman: This is one of those challenges where we want to see Great British Railways created to bring together track and train across Great Britain. We respect the devolved circumstances that exist, and are allowing the opportunity for those devolved authorities to come into that model as well in the way Alex just described. There will be a partnership approach with other devolved authorities, particularly those where devolution deals have been done, but in order to integrate track and train you want to take away as much fragmentation as you possibly can.

Q371 Gavin Newlands: I understand that point but fragmentation remains in Scotland nevertheless.

Huw Merriman: The powers will exist in Scotland as they currently sit. My hope is that everyone across Great Britain will see the opportunities of freeing up the day-to-day operational powers, putting them into the railway body, integrating track and train, meddling less and seeing an improvement for the passenger as well. I hope that Scotland and Wales will take the same opportunity that we are affording to England.

Q372 Gavin Newlands: The current situation is suboptimal, although clearly new ways have been found to incorporate the ScotRail Alliance, Scotland's Railway—call it what you will—but the fear is that with this new body, given that the Scottish Government and Scottish Parliament are responsible for funding, strategy and so on, the Bill as drafted will provide less accountability to the Scottish Parliament and Scottish Ministers for the rail sector in Scotland, because the new body is a bit more distant than the current arrangements. Is that not a genuine fear?

Huw Merriman: I don't believe so, but, given Alex's experience in Scotland, perhaps he will respond.

Alex Hynes: The draft Bill does not meddle with the existing powers that the Scottish Government have—

Q373 Gavin Newlands: Nor does it improve them for the devolved Administrations.



Alex Hynes: —which are very significant. As you rightly say, the Scottish Government use those powers, for example, to expect track and trains to work together in alliance. The Scottish Government can point to many good things arising from that. Obviously, we are trying to create a coherent rail network for Great Britain. Only the UK Government and Secretary of State can do that and they have to look at all three nations of the UK affected by Great Britain.

Huw Merriman: You say it does not devolve further. What we are devolving are the powers to Great British Railways. To bring in even more fragmentation would be completely counterintuitive, given that we are trying to set up a body, give it the powers across track and train and not have all of these different systems, which I do not believe work for the benefit of the passenger.

Alex Hynes: The other thing, as we heard from Mr Haines earlier this morning, is that Network Rail and ScotRail, GBR and ScotRail in the future, can do a lot more within the existing legislation to integrate track and train. The ScotRail Alliance, which has been around for nearly a decade, has had highs and lows; it has been thick and thin. I know that Network Rail, ScotRail and the Scottish Government are exploring opportunities to deepen the level of integration between track and train, and this draft Bill does not get in the way of that.

Q374 **Gavin Newlands:** Depending on which side of the border you are, one person's fragmentation is another person's defragmentation. It depends on the prism you are viewing the particular issue through. There is one issue before I come back to my final question. Mr Hynes, one of the issues that the Scottish Government brought up in their written representations to us is that DPTAC will be giving advice to the IRB. Over the years you will have dealt with MACS, which is the Scottish equivalent. There was a request that on the face of the Bill MACS would be given representation to give advice from a Scottish point of view. Is that something you would consider, or have any issue with?

Alex Hynes: We have seen Fiona Hyslop's representations in that regard. I think we will take that away in terms of what as a minimum is the requirement for DPTAC to consult.

Q375 **Gavin Newlands:** Consult with them.

Alex Hynes: Exactly.

Q376 **Gavin Newlands:** Fair enough. This is a draft Bill and you are happy to go away and look at representations from the Scottish and Welsh Governments and the Committee. At the moment, one of the big issues is that the Bill as drafted does not give devolved Scottish and Welsh Ministers power to give directions or guidance to the IRB—most directly Scotland because they have a lot more power currently than the Welsh Government. Is that something that could be looked at? That is a fundamental issue with the Bill as it stands from a Scottish viewpoint.



Huw Merriman: We will happily take the points that Fiona makes directly to me—I will find out whether there are any further to make—and those made in the letter we have seen that has been sent to the Chair, and the recommendations the Chair makes. We will take into account matters where we believe the Bill can be strengthened and made better. As I say, it is not in any way the intention to water down any powers at all. I do not want to get into a situation where we have a bit of a pick-and-mix approach to it. As things stand at the moment, there is the ability for any devolved authority to utilise the same GBR process that we are building here. At that time, as Alex was saying, there will be the opportunity to discuss how it will work. That strikes me as perhaps the best way because then you know what the model is that is being suggested and how to build it, and unwind it if that needs to be put in place as well. There might be something to be said for that flexibility, but if there are specific examples where the powers under this Bill are undermining the existing devolved powers that have been established, we will look at how that can be countered by checks and balances and comfort.

Q377 **Gavin Newlands:** We have heard both the Welsh Government and the Scottish Government say that as drafted the Bill is not compatible with the devolution settlement. Is that something you will have to look at to make sure that both Governments are content that any final Bill will be compatible with the devolution settlement?

Huw Merriman: This Bill is not designed to unpick what has already been devolved. If there are examples where the feeling is that it is not compatible, that is not the intent at all. I recognise that there are some grey areas, if I may call them that, in terms of the Secretary of State taking matters with regard to direction and guidance, consulting and making sure that that consultation is strong enough. I can see where we might need to look more closely at some concerns, but it is absolutely not the intention to unpick devolved powers. On the face of it, if there are specifics where the feeling is that it does so, we will obviously look at them. Does that seem fair?

Q378 **Grahame Morris:** Conrad, you mentioned passenger service contracts earlier. In the explanatory notes it says that their design will be finalised after GBR has been created. The contracts have been designed by the Department for Transport, Treasury and private operators, but under the legislation the Secretary of State will be able to instruct Great British Railways on whether it should make a direct award or go out to tender. Is that correct?

Conrad Bailey: It has to be correct, because if we are still in a position where it is not possible to go back to competition you would want GBR to be able to make direct awards in the same way that the Secretary of State can today.

Huw Merriman: Again, that is where we need to be quite clear as to who is making those decisions. The framework is set for that to run, but I



HOUSE OF COMMONS

do not foresee the Secretary of State getting involved in those decisions. The whole idea of moving the franchising and contracting powers from the Secretary of State to Great British Railways is that the GBR team will make that decision because they are the ones best placed to make it, Mr Morris.

Q379 **Chair:** I would like to conclude the session with two brief questions. My colleagues touched on the devolution points with regard to Scotland and Wales. We had a session yesterday with the sub-national transport bodies. Transport for the North in particular is concerned that its current statutory relationship with the Secretary of State will be diminished with GBR, and the other STBs want to have a more formalised relationship with GBR. Are their concerns valid?

Huw Merriman: We will happily look at their concerns. While the aim is to integrate track and train and make it easier to make decisions and have incentives aligned and not be so conflated, as I believe the railway set-up is at the moment, there is at the heart of the Williams review devolution in the form of partnerships. It is very much a regional approach for GBR, set across the regions that currently exist in Network Rail. Within that, there is the intent to form partnerships between GBR and devolved authorities and bodies like Transport for the North. Where we have already gone further with the devolved settlements, those will be the first to make the partnerships.

I do not foresee any way that the existing powers will be diminished, but I caution about making more powers devolved on the basis of particular devolved region boundaries, because I want the railway to be able to set what is best for railway boundaries. Sometimes there is conflict between the political boundaries where voters are, but the railway goes beyond that. That is really important, not least for freight because freight goes beyond it as well. I want this to be the opportunity for the railway to be put first and for us not to end one form of fragmentation and deliver another form.

Q380 **Chair:** My last question is about the ticketing platform initially envisaged for GBR, but which you decided was no longer required. We had evidence from some witnesses that having that central platform would enable greater private sector involvement in providing ticket retailing. Is it something you are willing to reconsider?

Conrad Bailey: As the Minister said, the decision was taken that there was a risk we would end up with a dominant public sector ticketing system alongside dominant players in the private sector. It was felt that we would be better able to encourage competition by avoiding the creation of that public sector body. What we are still doing and what is critical is working with the sector to look at how the back office functions of the ticketing system, which are incredibly complicated, as the Committee is very aware, are brought together in ways that make it easier for new entrants to gain access so that the cost of entry to the



HOUSE OF COMMONS

market becomes easier for private sector competitors, and we encourage competition. That is the work on which we are now focusing.

Huw Merriman: The decision by the Secretary of State and the Government was to proceed on the basis of having more retailers in place rather than one centralised GBR retailer. I cannot see that being changed, because the decision was looked at in great depth and then made. If there is a case to be made, it is to ensure that we have more access to data so that we have more competition, because at the moment there is one rather dominant player in place. While that dominant player has been very helpful on innovation, it is not healthy when you have such a large share controlled by one entity. Conrad was more involved in that than I was.

Chair: That is very helpful. That concludes our long session this morning with three panels. I thank the three of you very much indeed for your time and evidence this morning. Our job is now to go away and analyse all the points that have been made to us, and we will endeavour to come back with our report as quickly as we can. For now, thank you again.