

## **Written evidence submitted by Porterbrook Leasing Company Ltd (RRB0010)**

- 1 Introduction
  - 1.1 Porterbrook welcomes the opportunity to respond to the Transport Select Committee's (the "Committee") Call for Evidence on the government's draft Rail Reform Bill
  - 1.2 We hope that our contribution will be of value to the pre-legislative scrutiny process. Should the Committee require further detail, we would be pleased to expand on any area of our submission as appropriate
- 2 About Porterbrook
  - 2.1 Porterbrook has been at the heart of UK rail for three decades and owns around a quarter of the national passenger rail fleet, with 4,082 vehicles in our diverse portfolio of passenger and freight rolling stock
  - 2.2 We are a partner that adds value today and for the long term through private investment, industry leading innovations and essential network projects that help deliver a safe, efficient and sustainable railway
  - 2.3 To date, Porterbrook has invested £3.5bn in new passenger and freight vehicles and we are actively looking to invest a further £1bn in UK rail in the coming years
  - 2.4 Our 135-acre Long Marston Rail Innovation Centre in Warwickshire is an invaluable asset for the railway to test and trial new traction technologies, maintain and securely store rolling stock as well as supporting vital training in a live environment. Since June 2021, we have invested £13m to upgrade the site, bringing new facilities and services online that benefit customers, partners and suppliers throughout the industry
  - 2.5 Our talented engineers are leading some of the most exciting innovations taking place in the railway today. Since 2018 we have invested over £73m in the development of greener and smarter traction technologies such as battery, hybrid and hydrogen powered trains. These innovations support the UK's commitment to Net Zero by 2050, improve air quality, reduce emissions, and enhance network resilience

- 2.6 In collaboration with industry partners, we project manage the delivery of regular upgrades to our fleets. Each year we invest over £100m in existing assets, supporting 100+ UK-based companies and c.7,000 jobs
- 2.7 We employ 165 people, of which three quarters are engineers and project managers. In addition, 30% of Porterbrook's workforce is female which compares favourably to the UK rail industry average of 16%<sup>1</sup>
- 2.8 Porterbrook is wholly owned by a group of supportive long-term institutional infrastructure investors, fully committed to the future of the UK rail sector including Alberta Investment Management Corporation, Allianz Capital Partners on behalf of certain insurance companies of the Allianz Group, a joint venture between Dalmore Capital and Generation Capital, and EDF Invest. All entities in the Porterbrook Group are UK resident for tax purposes

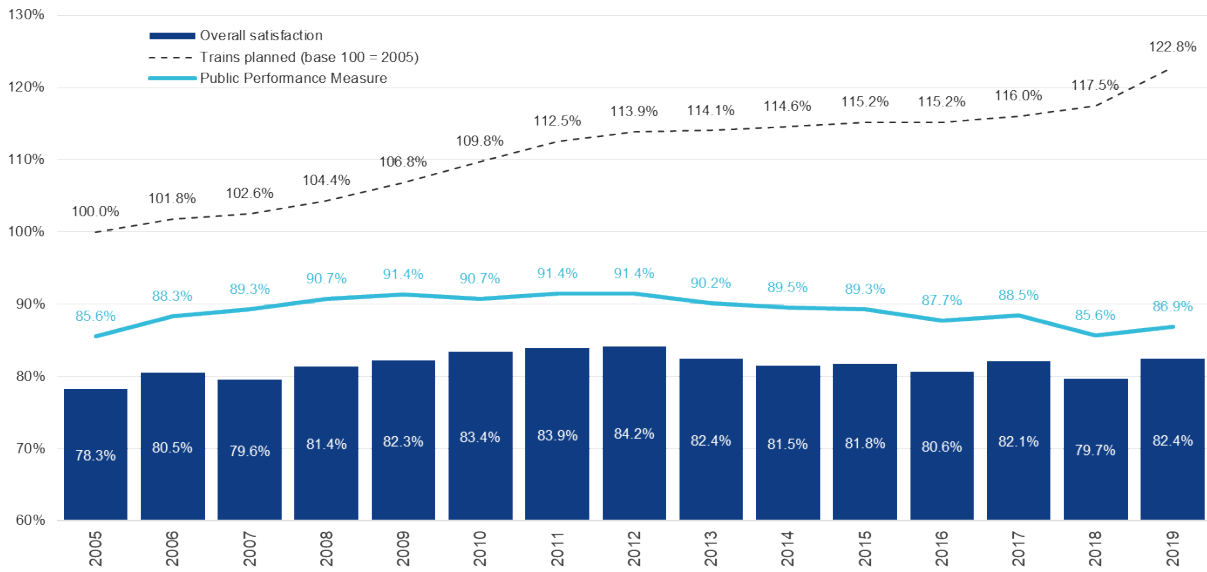
### 3 The Integrated Rail Body

- 3.1 If enacted, would the draft Bill provide the necessary legislative foundations for an integrated rail body with franchising powers (Great British Railways), as envisioned in the Plan for Rail?
  - 3.1.1 We agree that the draft Bill would provide the necessary legislative foundations, taking account of the comments made within our response
- 3.2 Will the integrated rail body (IRB), as proposed in the draft Bill, achieve the Government's aim of a 'guiding mind', providing: (i) better accountability, (ii) more reliable services, (iii) greater efficiency, and (iv) coordinated growth, across both passenger and freight sectors?
  - 3.2.1 Porterbrook welcomed the publication of the Plan for Rail and continues to support the principle of a guiding mind for Britain's railway
  - 3.2.2 We believe that the establishment of the IRB, as proposed in the draft Bill, will help achieve the government's aims
  - 3.2.3 However, establishing the IRB will not in itself achieve these strategic objectives. Aspects other than industry structures will be equally important to ensure that the intended benefits of rail reform are effectively delivered. These include:

- (a) Ensuring that the IRB embodies a customer first culture, with effective mechanisms in place to ensure decisions are taken in the interest of rail users
- (b) Devising commercial models which are fit for purpose, with the right incentives in place to deliver growth, optimise performance and yield efficiencies whilst maintaining the highest levels of safety

3.2.4 The analysis of the railway's operational track record shows the importance of culture and incentives in driving performance, alongside industry structures. For example, whilst the Railways Act 2005 has provided a stable industry framework for almost 20 years, different approaches to contracting in that period led to greatly different outcomes:

- (a) The initial franchises (awarded on the basis of streamlined, outcome-based contracts) coincided with a sharp increase in on-time performance (from 86% in 2005 to 91% in 2012 ) and passenger satisfaction (from 78% in 2005 to 84% in 2012 ). This in turn resulted in growing usage and revenue (from £6.9bn in 2005 to £10.1bn in 2012)
- (b) From 2012 onwards, franchise agreements became more complex and prescriptive, with ministers increasingly involved in tactical decision making such as specifying detailed stopping patterns. Both passenger satisfaction and operational performance have been declining since then, as illustrated in Figure 1



**Figure 1: Public Performance Measure (PPM), passenger satisfaction from the National Rail Passenger Survey (NRPS), and number of trains planned**

3.2.5 In the foreword to the Plan for Rail the authors state “Network Rail, the current infrastructure owner, will be absorbed into this new organisation”

- (a) However, the explanatory notes published alongside the draft Bill state that Network Rail "will be designated as the IRB”
- (b) It is imperative that the IRB is, in fact, a new organisation with the right culture and drivers
- (c) To achieve this, we believe that more checks and balances are required as further detailed in paragraph 3.6

3.2.6 Another necessary condition is that the IRB should have the capacity to develop, lead and deliver the transformation programme. Consideration should be given to Network Rail’s ability to do so whilst simultaneously improving its performance as infrastructure manager. In its annual assessment for 2022-2023<sup>2</sup>, the Office of Rail and Road (ORR) noted that:

- (a) Network Rail was already facing coinciding difficulties including industrial action, extreme weather events, and financial pressures

- (b) these factors presented “a significant management challenge” and would likely continue to affect Network Rail’s performance

3.3 Would the provisions of the draft Bill establish an IRB with the independence and accountability to achieve its aims? If not, what amendments would be needed?

3.3.1 We believe that the draft Bill offers appropriate provisions to ensure that the IRB has the independence and accountability required to achieve its aims

3.4 Are the arrangements set out for the granting and amendment of the IRB’s licence and the inclusion of specific conditions within that licence appropriate?

3.4.1 We believe these arrangements to be appropriate

3.5 What will be the effect of the requirement on the IRB to prepare an annual report setting out what it has done to increase private sector involvement in the running of railway services?

3.5.1 The effect will depend on the items which the IRB is required to include in its annual report. These are not detailed in the draft Bill and associated explanatory notes

3.5.2 We would see merit in:

- (a) a requirement for the integrated business plan to include targets for private sector involvement

- (b) the annual report setting out:

- (i) the steps taken to attract private investment, including in new and existing rolling stock and other associated assets (e.g. depot facilities)

- (ii) achievement against those targets

- (iii) the impact of the proposed rolling stock procurement pipeline on the rail supply chain

3.6 What arrangements should be put in place for scrutiny of the IRB’s business plan?

- 3.6.1 We support the requirement placed on the IRB to produce and publish an integrated business plan
- 3.6.2 We believe that such a plan should be based on 5-year cycles as is the case today for Network Rail's Control Periods
- 3.6.3 Scrutiny of the plan and whether the relevant outputs are achieved should come from:
- (a) the Secretary of State using their new powers to give directions and guidance in Section 4D
  - (b) the Office of Rail and Road (ORR) as part of its monitoring of the activities of the IRB which it should undertake alongside the existing periodic review process. The ORR's remit should extend to the scrutiny of all the activities contained in the IRB's business plan, including:
    - (i) the operation, maintenance, renewal and enhancement of railway infrastructure
    - (ii) the letting of passenger rail services following the transfer of this responsibility from the Secretary of State
    - (iii) the levels of private sector investment
- 3.6.4 To ensure the scrutiny is carried out effectively, consideration should be given to imposing:
- (a) a requirement for the Secretary of State to approve the integrated business plan and any amendments to it
  - (b) an obligation on the IRB to report annually on its delivery of the outputs required by the business plan and any delays (together with an explanation of the reasons for any failure)

- (c) a requirement for the ORR to either:
  - (i) take action against the IRB if it fails to achieve/deliver, in a timely fashion, any outputs from the plan. This could include the power to require a remedial plan from the IRB and/or
  - (ii) make a recommendation to the Secretary of State that it should exercise its powers under Section 4D to make a direction to address any such failure or to make a change to the IRB's licence

3.7 Are there further elements of the Government's aims for the IRB that should be given a statutory footing?

3.7.1 We believe that the legislative foundations are sufficient

4 Other provisions

4.1 Are the interests of passengers and freight users sufficiently promoted by the provisions of the draft Bill?

4.1.1 Generally, we believe that the interests of passengers and freight users are adequately promoted

4.1.2 A specific point relates to Clause 7, Subsection (4) of the draft Bill which appears to terminate any performance regime between the IRB and concessionaires operating services on its behalf

(a) We believe that clarifications may be required to determine:

(i) how the IRB as the infrastructure manager will be incentivised to minimise disruptions caused by its activities in the absence of a performance regime; and

(ii) how operators contracted by the IRB will be compensated for poor performance from the infrastructure manager

(b) We expect that a performance regime will continue to be required between the IRB, open access and freight operators. Further clarification may be beneficial to set out

who will compensate these operators for delays caused by the concessionaires running services on behalf of the IRB

4.2 Does the draft Bill make effective provision for the role of the Office of Rail and Road?

4.2.1 As stated in this response, we believe that the ORR should be specifically required to scrutinise all the activities contained in the IRB's business plan and to either:

(a) take action against the IRB and/or

(b) make a recommendation to the Secretary of State that it should exercise its powers under Section 4D to make a direction to address any such failure

4.3 What assessment should be made of the draft Bill's provision that the Scottish and Welsh governments may arrange for the IRB to exercise their devolved franchising powers?

4.3.1 We note that Clause 3 of the draft Bill enables Scottish and Welsh Ministers to delegate some or all of their franchising functions to the IRB, subject to consultation and agreement with the Secretary of State and the IRB

4.3.2 We believe this provision is appropriate to ensure that the powers currently delegated to Scottish and Welsh Ministers are protected, whilst providing them with an option to collaborate more closely with the IRB should they wish to do so

4.4 What will be the effect of the implementation in UK law of the Luxembourg Rail Protocol? Is the range of powers granted to the Secretary of State in clause 15 necessary to achieve the aims of the Protocol?

4.4.1 In principle, Porterbrook supports the policy objectives set out in Annex G of the Impact Assessment, which are to:

(a) unlock greater levels of private investment and reduce costs for UK rolling stock transactions

(b) increase opportunities for UK businesses to participate in overseas financing activities



4.4.2 However, as further detailed in our response to the DfT's 2022 consultation on legislative changes<sup>3</sup>, we have seen no evidence that implementing the Luxembourg Rail Protocol (the "Protocol") in the UK will help achieve these objectives

4.4.3 The Rail Working Group (RWG) has been lobbying for the implementation of the Protocol in the UK

(a) RWG commissioned a report from Oxera to assess the direct microeconomic benefits from the Luxembourg Rail Protocol. This concluded it will save Europe €19bn

(b) We have spoken to the author of the report who confirmed that it was a desktop exercise and they did not obtain confirmation from any lenders as to whether it will result in reduced rates, or a more attractive financing market, in Great Britain

(c) In our opinion, the market for financing rolling stock in Great Britain is highly competitive and this is already reflected in the rates charged. Lenders have confirmed to us that they would not reduce rates as a result of the Protocol

4.4.4 We note that the DfT's impact assessment does not include any monetised costs or benefits of the Protocol, and welcome the government's commitment to run a consultation and further analysis prior to implementation of subsequent secondary legislation

## 5 General

5.1 Are the delegated powers envisaged by the draft Bill necessary and sufficient to meet its aims?

5.1.1 We believe that the delegated powers envisaged by the draft Bill are sufficient

5.2 What lessons should be learned from previous legislative changes to the institutional architecture of the rail sector?

5.2.1 The Railways Act 2005 introduced substantial changes to the regulatory structure for railways in the United Kingdom, including

the abolition of the Strategic Rail Authority and transfer of its franchising functions to the Secretary of State

5.2.2 As highlighted in paragraph 3.2.4, the introduction of the Act was successful and led to a marked improvement in operational performance and passenger satisfaction. It was also delivered remarkably quickly, with less than nine months between the publication of a White Paper in July 2004, and Royal Assent in April 2005

5.2.3 However, under the same regulatory framework, overly prescriptive contracts and ministerial micromanagement then led to a decline in performance. We believe that the following lessons can be learned:

- (a) Structural reforms, when implemented well, can enable quick, meaningful and positive change
- (b) However, they should not be seen as a sufficient condition. Having the right culture, commercial models and incentives in place is equally important

5.3 Are there further provisions within the draft Bill that the Committee should focus its scrutiny on?

5.3.1 No, we have not identified any such provisions

March 2024

## Endnotes

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<sup>1</sup> National Skills Academy for Rail, 2023

<sup>2</sup> Annual Assessment of Network Rail, Office of Rail and Road, 2023 ([link](#))

<sup>3</sup> See Porterbrook response to 'Williams-Shapps Plan for Rail: legislative changes to implement rail reform', August 2022, Questions 50 and 51 ([link](#))