

Written evidence submitted by Transport for the South East (RRB0015)

Introduction

Transport for the South East (TfSE) is writing to you in response to the Call for Evidence by the Transport Select Committee for its pre-legislative scrutiny of the draft Rail Reform Bill.

This is a draft officer response that will be presented to the TfSE Partnership Board on 13th May 2024 for them to agree. A further iteration may therefore follow.

TfSE is a sub-national transport body (STB) that represents sixteen local transport authorities in the South East of England, including Brighton and Hove, East Sussex, Hampshire, Kent, Medway, Surrey, West Sussex, the Isle of Wight, Portsmouth and Southampton, and the six Berkshire unitary authorities. We also represent five local enterprise partnerships, district & borough authorities and protected landscapes organisations.

TfSE provides a mechanism for its constituent authorities and other partners to speak with one voice on the transport interventions needed to support sustainable economic growth across its geography. High-quality transport infrastructure is critical to making the South East more competitive, contributing to national prosperity and improving the lives of our residents.

TfSE published its first 30-year Transport Strategy in 2020 and we are currently refreshing this to take account of the Government's Net Zero target date of 2050, the changes the travel behaviour since Covid and the changes in freight and passenger movement through the international gateways in our region following the UK's departure from the European Union.

We have also published a 30-year Strategic Investment Plan (SIP) in 2023. The packages detailed in the SIP address eight investment priorities aligned with the vision and strategic goals of the TfSE Transport Strategy and the wider national policy context. This includes eight packages of rail interventions, containing 79 schemes accounting for an estimated capital cost of £24bn out of a total £45bn SIP cost.

Our SIP provides a framework for investment in strategic transport infrastructure, services, and regulatory interventions over the coming three

decades. It is underpinned by a credible, evidence based technical programme that has enabled TfSE and our partners to:

- Understand the current and future challenges and opportunities in the south east.
- Identify stakeholder priorities for their respective areas of interest.
- Evaluate the impacts of a wide range of plausible scenarios on the south east's economy, society, and environment.
- Develop multi-modal, cross-boundary interventions.
- Assess the impact of proposed interventions on transport and socio-economic outcomes; and
- Prioritise the interventions that best address the south east's most pressing challenges and unlock the south east's most promising opportunities.

When we set up TfSE, we formed ourselves on the basis of the intent in the Cities and Local Government Devolution Act 2016 when it created STBs. We think that when this new legislation is being introduced to create the IRB, it needs to acknowledge the Transport Act 2008 as amended and take into account the role and functions of STBs.

STBs were created through the amendments to the Local Transport Act 2008 made by section 21 of the Cities and Local Government Devolution Act 2016. The general functions of STBs (as set out in s102H of the 2008 Act) include:

- Develop, maintain and support the implementation of a transport strategy for your region.
- Provide advice to Secretary of State about the exercise of transport functions in relation to the area (whether exercisable by the Secretary of State or others), in particular on prioritising transport investment.
- Support Local Transport Authorities' carrying out of transport functions in your area, with a view to improving the effectiveness and efficiency in the carrying out of those functions.
- Make proposals to the Secretary of State for the transfer functions to the STB, if the STB considers that a transport function in relation to the area would more effectively and efficiently be carried out by the STB.
- Make other proposals to the Secretary of State about the role and functions of the STB.

Under the Act the Secretary of State must also have regard to STBs' transport strategies and the proposals within them in determining national policies relating to transport and how such policies are to be implemented in relation to the area of the STB.

The William-Shapps Plan for Rail (published by DfT in May 2021) highlights the important role of partnering in the transformed railway. It states that Great British Railways (GBR) should “work openly and transparently with local, devolved and commercial partners” (Williams-Shapps Plan for Rail, p30). GBR will “work with and be responsive to the needs of local and regional partners” (p40 text box). “In England, new partnerships with Great British Railways' regional divisions will give towns, cities and regions greater control over local ticketing, services and stations (heading, p41).

Summary

TfSE welcomes the creation of the Integrated Rail Body (IRB) to deliver better outcomes for passengers and freight customers. However, the creation of the IRB should respect and recognise the existing devolved arrangements at the sub-national level. The draft Rail Reform Bill needs to reflect the intention set out in the Transport Act 2008 as amended by the Cities and Local Government Devolution Act 2016 and the rail white paper as set out above, to ensure that the STB transport policies and proposals are properly accounted for by the IRB in determining their policies and implementation plans.

To address this issue, the Bill needs to include further amendments requiring the IRB to consult and seek and respond to advice from STBs,. This would be consistent with the Transport Select Committee's recommendation in respect of the operating licence for National Highways. The Select Committee identified that STBs have a better understanding and knowledge of local priorities and the schemes needed in the areas to deliver them. Similarly, the Office of Rail and Road (ORR) should also be required to formally seek and respond to advice from STBs when discharging its duties in relation to the rail operating system. The latter has not been included in the draft thus far.

The following clauses of the draft Bill would need amendment to address these issues:

- Clause 1 and Schedule 1 - the requirements for the IRB's network licence and its requirement to publish a business plan in Clause 1;

- Clause 2 and Schedule 2 - the transfer of the franchising authority functions and related matters from the Secretary of State to the Integrated Rail Body (IRB); and
- Clause 7 - enabling the IRB to become an infrastructure manager in Clause 7.

Responses to the Transport Select Committee Questions

The Integrated Rail Body

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?

TfSE believes that the draft Bill provides the necessary legislative foundations for the IRB as envisioned by the William-Shapps Plan for Rail.

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?

While the draft Bill allows for the creation of the IRB, it does not guarantee the achievement of the outcomes envisaged in the question. An explicit operating model is the only way in which we would be able to judge if the IRB will deliver these outcomes, although this is not within the scope of this current legislation.

However, providing that the draft Bill is amended to ensure that the IRB takes account of the STBs strategies and plans, consults with, and responds to advice from the STBs, then the IRB would be in a stronger position to deliver the objectives as set out above. The existing rail arrangements for Transport for the North (TfN) provides a reasonable basis for an operating model of how the IRB and STBs should work together. TfN has devolved rail powers through a contractual agreement which provides for the joint oversight of the delivery of rail services provided by the train operating companies (TOCs) in their area between TfN and the Secretary of State. TfN also acts as a statutory partner to the Secretary of State with respect to rail investment. With the exception of the specific contract with the TOCs in the TfN area, STBs should have similar joint oversight with the IRB of the delivery of rail services in their own areas

and act as a partner to the IRB regarding rail investment decisions. This would ensure that IRB decisions related to service provision and rail investment take full account of the STBs' priorities as set out in their strategies and plans.

Draft Bill reference: Clause 1 Schedule 1 para. 4 – amendment to the Railways Act 1993 section 9.

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?

While the IRB will be accountable to the Secretary of State, the Bill should also recognise the role of STBs as set out in the Local Transport Act 2008 (as amended) as the focus for sub-national accountability. As the bodies who provide advice and evidence to the Secretary of State in relation to the need for investment in the transport infrastructure in their areas, the IRB should also seek the advice of the STBs and take account of them when formulating their own plans and proposals. This would apply in the areas of franchising decisions and the IRB business plan. In addition and as stated previously, the ORR in their capacity of holding the IRB to account, should also ensure that the IRB adequately reflects the comments of any STB in their business plan.

This is particularly important for the operation of the newly established strategic Wider South East Rail Partnership. This has been set up as envisaged in the Plan for Rail and is tasked with the aim of supporting housing, economic growth and the environment across the highly interconnected transport network in the South East. The Plan also sets out that the partnership will co-ordinate timetabling and investments to provide a consistent passenger experience in areas such as accessibility, ticketing and communications. TfSE, England's Economic Heartland and Transport East, all STBs, are major partners in this partnership, with Transport for London and the GBR transition team, and this amendment would ensure that the STBs are recognised as full partners, in the same way as Transport for London by the IRB.

Draft Bill reference: Clause 1 4B The IRB Business Plan.

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?

No. The Bill as drafted fails to take account of the role of STBs in the railway's future operating arrangements. As set out previously, a condition of the IRB's network licence should be that the IRB is required to formally seek and respond to advice from STBs. Such a requirement would be consistent with the Transport Select Committee's recommendation in respect of the National Highways operating licence.

That said, TfSE welcomes the requirement of the network licence to include specific conditions in relation to freight, accessibility, the environment, and social and economic benefit.

Draft Bill reference: Clause 1 Schedule 1 para. 4 – amendment to the Railways Act 1993 section 9.

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?

While it is important to attract investment from the private sector, there is a risk that it could overly focus the IRB's attention on meeting the private rather than the public sector's objectives.

In fulfilling its network licence to make appropriate provisions for freight, have regard to the accessibility needs of disabled persons, take account of the effect of its proposals on the environment, and maximise social and economic benefits, the IRB's annual report should set out the extent to which it has delivered these objectives and how it has taken into account the proposals put forward by the STBs and other public sectors bodies with a role in the identification and delivery of railway improvements. This could be achieved by extending the requirement in the amendment. Again, to deliver this requirement the IRB should take and respond to advice provided by STBs.

We also consider that the determining factor in attracting and increasing private sector investment will be the IRB's business plan rather than the proposed annual report.

Draft Bill reference: Clause 1 4C The IRB Annual Report.

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

Given that the Office of Rail and Road's (ORR) current role is to scrutinise Network Rail's plans and activities as part of the periodic review process, we agree that the ORR should lead on the scrutiny of the IRB's business plan. The ORR must assess the IRB's activities against its outputs, ensuring that the outputs agreed are affordable and deliverable.

TfSE also has a close working relationship with Network Rail to ensure that we work in partnership to deliver our respective proposals, plans and priorities and that relationship should be allowed to continue with the IRB once it is in place. The evidence provided by STBs in their transport strategies, proposals and plans is a key driver of strategic economic outcomes and investment in their areas. Their strategies and plans cover periods of up to 30 years into the future and include proposals to optimise and renew transport networks and improve services in their areas, including those in relation to rail. Therefore, the Bill should be amended to require the IRB to formally seek and respond to advice from STBs. The IRB should therefore be required to reflect any advice from STBs in its business plan. Again, the ORR, in their capacity of holding the IRB to account, should also ensure that the IRB's final business plan sufficiently reflects the comments of any STB on their draft.

Draft Bill reference: Clause 1 4B The IRB Business Plan.

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

TfSE has no comments to make in response to this question.

Other provisions

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

TfSE supports the conditions set by the Secretary of State for the IRB's proposed network licence including those in relation to freight, accessibility, the environment and social and economic benefit. However, the interests of passengers and freight users would be better promoted if the IRB's licence also required the IRB to take advice from and respond to the STBs because the proposals and plans contained in STBs strategies already directly reflect the interest and needs of passenger and freight users in their areas.

For the same reason, STBs should also be included in other proposed amendments in the draft Bill which deal with the requirements for the IRB to consult with or take advice from Passenger Transport Executives (PTEs) and others, including:

- The requirement to consult before issuing an ITT for a franchise agreement that includes services in which an STB for an area in England has an interest;
- The requirement to consult about proposals to discontinue certain railway passenger services, or the closure of passenger networks or stations in STB areas. Currently Schedule 7 of the Transport Act 2005 sets out the required consultees for these purposes and states that consultation needs to be carried out with “every local authority in whose area there are persons living, working or studying who appear to the person carrying out the consultation to be persons affected by the proposal”. The STBs should be consulted as they are made up of the local transport authorities in each of their areas;
- The requirement that the IRB must consult the Secretary of State prior to designating a service as experimental should also include STBs as a consultee. Again, this will ensure that the IRB has regard to the STB’s existing plans and proposals and the passenger and freight operator needs in their areas when designating or closing an experimental passenger service; and
- TfSE proposes that the amendment relating to the duty of PTEs to provide advice to the Secretary of State should be extended to include the STBs. This will mean that STBs can provide advice to the IRB on a range of issues including for example, how changes in the local rail network can be made to best reflect local priorities. As stated above, STB’s existing strategies already reflect regional and local priorities and the needs of passenger and freight operators so this could only improve proposals prepared by the IRB for local rail improvements.

Draft Bill reference: Clause 1 Schedule 1 para. 4 – amendment to the Railways Act 1993 section 9.

Draft Bill reference: Clause 2, Schedule 2 – amendments to the Railway Act 2005, section 12, Schedule 7 attached to sections 21 – 33, section 36 and section 52

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

The draft Bill does not address the need for the Office of Rail and Road (ORR) to formally seek and respond to advice from STBs when discharging its duties in relation to the rail system. This would be of particular relevance in relation to its role in monitoring the performance of passenger train operators and ensuring that the IRB properly reflects its consultation with and the advice of STBs in its business plan.

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?

TfSE has no comments to make in response to this question.

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?

TfSE has no comments to make in response to this question.

General

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

TfSE has no comments to make in response to this question.

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

TfSE has no comments to make in response to this question.

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

TfSE has no comments to make in response to this question.

Conclusion

In conclusion, TfSE welcomes the draft Bill to implement the necessary legislative to enable the creation of the IRB, to confer its network operating licence and to provide its franchising functions. However, a number of amendments would be necessary to reflect the intention of the Government relating to STBS as set out in the Local Transport Act 2008 (as amended). As some of the Secretary of State's functions are being transferred to the IRB, so should the requirement to seek advice from and consult with STBs. The draft Bill provides the opportunity to enable this in relation to the IRB when exercising its functions both as a network operator and a franchising authority. The draft Bill also provides an opportunity to extend this requirement to the ORR to ensure that the IRB fulfils its requirements as proposed by the STBs.

To deliver this, the draft Bill should include amendments relating to the role STBs in following clauses: :

- Draft Bill reference: Clause 1 Schedule 1 para. 4 – amendment to the Railways Act 1993 section 9.
- Draft Bill reference: Clause 1 4B The IRB Business Plan.
- Draft Bill reference: Clause 1 4C The IRB Annual Report.
- Draft Bill reference: Clause 1 Schedule 1 para. 4 – amendment to the Railways Act 1993 section 9.
- Draft Bill reference: Clause 2, Schedule 2 – amendments to the Railway Act 2005, section 12, Schedule 7 attached to sections 21 – 33, section 36 and section 52.

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