

Written evidence submitted by the Campaign for Better Transport (RRB0018)

Background

Campaign for Better Transport is the national charity working across England and Wales to make transport better, greener and fairer. Our vision is for all communities to have high quality, sustainable transport that meets their needs, improves quality of life and helps protect the environment. We have over 25,000 supporters and are a well respected advocate for public and sustainable transport in Westminster, Whitehall and in local and combined authorities across England and Wales.

Recently, we have produced research on the merits of taking the train over the plane on domestic and near Europe routes (*Plane Speaking*), the pathway for reform of rail fares and ticketing (*A fare future for rail*) as well as publishing statistics on the carbon savings of taking the train instead of driving (*Making a difference* — in partnership with the Rail Delivery Group and Network Rail).

We have been in regular communication with the Department for Transport and His Majesty's Treasury on the contents and scope of this draft Bill and are delighted that officials have taken forward some of our recommendations.

Foreword

We are delighted to see this Bill come before the Transport Select Committee. Passengers and the industry have been waiting far too long for the welcomed proposals outlined in the Williams Plan for Rail in 2021. Both we and the industry are disappointed this Bill was introduced in draft form, and delayed despite the House of Commons continuing to rise early on days when debate might have occurred. With this said, we are glad that these discussions are now happening, and look forward to contributing to and reading the findings of this inquiry.

We, like others, are interested in the proposals put forward in the draft Rail Reform Bill and welcome much of what has been outlined by the Department for Transport. However, as will be understood in the responses to the questions that have been posed, there are some uncertainties that we believe need to be addressed by the Transport Select Committee if there is to be broad support for this Bill, both when it goes through the House of Commons and when it is implemented following royal assent.

Campaign for Better Transport looks forward to assisting the Committee, and we are happy to provide oral evidence to the Committee.

The Integrated Rail Body

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?

We believe that the draft Bill would lay the necessary legal foundations to create an integrated rail body (IRB).

However, we have concerns about the way this will be achieved. On page four of the explanatory notes of the Bill, it is stated that it is the government's 'intention' to create this integrated rail body from Network Rail Infrastructure Limited. This has further been confirmed in discussions with senior officials at the Department for Transport and Great British Railways Transition Team. We, like others in the industry, would like to see the creation of a guiding mind but are concerned by the potential creation of a 'Network Rail 2.0'. We do not want to see the existing issues transferred to this new body, and feel that the IRB should be a fresh start, so have concerns over the transferral of power. Whilst we understand the arguments of the Department — that the transference of powers to Network Rail is the logistically easiest way to move 40,000 staff — we believe that the Transport Select Committee should review this wording to ensure the protection of the philosophy of a guiding mind, which has broad support across the rail industry.

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?

Yes, the phraseology used in the draft Bill includes provisions that should create the conditions for greater accountability, more reliable service, efficiency and growth in the passenger sector.

With regard to passenger services, as we have said prior to the formulation of the Bill, giving a single body oversight over both track and train allows an integrated approach to both service planning and service delivery. The intentions expressed in the Bill, and its explanatory notes, also seek to drive efficiency across the network with an emphasis on coordination. Many schemes to improve services and fares will require decisions that balance

short-term expenditure with long-term expected revenue growth. We hope the IRB will be able to optimise resources and reduce costs for the passenger in this way. Ultimately, the IRB should be able to make decisions pertaining to both costs and revenue on the network, with limited reliance on HM Treasury. Whilst we understand the need to not overcomplicate the Bill, this needs an explicit commitment from government.

However, we remain concerned about the IRB prioritising passenger services over freight, with the IRB being responsible for the movement of passengers and the infrastructure, but not responsible for freight. We can certainly envisage a situation in which freight companies feel discriminated against because of their lack of involvement within the IRB. We would ask that the Transport Select Committee seek the views of the rail freight operators in this matter.

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?

The Draft Bill indicates that the IRB will have dual responsibilities, acting as both a franchising authority and an infrastructure manager. Its role will involve overseeing various functions and duties through its network licence. This structure aims to streamline decision-making and management within the railway system, potentially leading to more efficient operations and improved services for passengers.

We believe that the responsibility of and powers for the Secretary of State for Transport to issue directions and guidance as outlined in Chapter One, Clause One, Section 4D of the Bill; as well as the duties of the Office of Rail and Road (ORR) described in Chapter Three, Clauses Four to Six provide both the independence and accountability as envisioned in the Plan for Rail.

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?

Section Eight of the Railways Act (1993) states that the Secretary of State, after consulting with the ORR, or the ORR with the consent of the Secretary of State, may grant licenses to individuals or entities authorising them to operate specific railway assets or classes of assets.

We agree with the amendments proposed. It is right that only the Secretary of State should grant and modify the IRB licence, and it is appropriate that the flexibility exists for the ORR to amend it with consent from the IRB. We also agree that, under these arrangements, it makes sense that the ORR should retain the ability to refer other licence holders but not the IRB to the Competition and Markets Authority.

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?

It is crucial for the future development and growth of the railways that the private sector be involved. We welcome the requirement for the IRB to report annually on what it has done to increase that involvement, but feel that Section 4 should therefore contain an explicit requirement for competition and private sector participation to preclude the backward step of nationalisation, and protect freight and other open access operators. This should act as a stimulus to fulfil the Plan for Rail's commitment to greater commercial freedom on the network, new open access services where feasible, and meeting the Government's rail freight growth target of 75% growth in net freight tonne kilometres by 2050.¹

While the current system of privatised franchises is failing passengers, privatisation as a whole (supported by central government investment through Network Rail) has broadly been a success. Between 1993 and 2013, passenger revenue rose by £3.2 billion, with 96% of the increase coming from passenger growth; journey numbers increased by 73%, with the growth rate more than doubling since the last years of British Rail; and passenger growth in Britain was greater than in France, Germany and the Netherlands.² In addition, rail freight has been the great success story of privatisation, with an 80% increase in traffic between 1995 and 2015.³ Furthermore, Open Access has proven effective, improving services and reducing costs for passengers. Open Access Operators increase competition, lower fares and stimulate the introduction of innovative services (such as free Wi-Fi).⁴ In 2021, Two leading open access providers – Grand Central and Hull Trains – had the highest passenger satisfaction ratings: 96% and 94% respectively.⁵

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

The Draft Bill stipulates that the integrated business plan will provide the ORR with the means to monitor the IRB's activities and measure them against its

designated responsibilities. Section 55 of the Railways Act (1993) allows the ORR to issue compliance orders if an operator is contravening, or is likely to contravene, any relevant condition or requirement. Under Section 4, Part 8 the ORR should be given the power, following scrutiny by the ORR, to sanction the IRB if it is found to have failed to meet its obligations as laid out in the business plan.

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

Section 4B states: 'when preparing or revising a plan under this section, the IRB must have regard to the effect that the exercise of its functions, as is to be proposed in the plan, is likely to have on businesses in the private sector that carry on activities connected with the provision of railway services'. The explanatory notes interpret this as including '(but is not limited to) the management of the operation, maintenance and renewal of existing railway infrastructure, infrastructure enhancement activity as authorised by the Secretary of State, and passenger services'. A focus on passenger services is stated, but freight services are inferred. There is insufficient attention given to the Government's commitment to growing rail freight in the legislation. Therefore, the IRB's responsibility to rail freight and facilitating private rail freight operators should be explicitly stated in the legislation.

Other provisions

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

Promoting the interests of passengers is addressed in the draft bill, but not freight. The explanatory notes include 32 references to the passenger – but only three to freight. The draft legislation should maintain and enhance safeguards to support the role of the freight sector operators, including specifically the creation of a fourth core function for the IRB to provide high quality infrastructure for freight and other open access services. There should also be a legislative requirement for competition, and that the Department for Transport and operators grow the network and invest in the railways, so that the Plan for Rail can be realised in full.

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

To ensure the continuation of what the Office of Rail and Road does currently, we believe there is effective provision within the Bill. The general duties of the ORR will not change significantly from the role it currently has. The ORR will have oversight over access, dispute resolution and compliance with the regulatory framework, among others.

However, Campaign for Better Transport believes that the Bill should grant the ORR should also grant the responsibility to oversee passenger services as well as infrastructure. We believe that the integration of track and train demands an overseeing authority to ensure that passenger service quality and standards, as well as infrastructure, are up to scratch. This would require a greater amount of resource directed to the ORR from the Treasury.

10. 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?

Campaign for Better Transport works closely with the Welsh government — and our sister organisation, Transform Scotland, works with the Scottish government. Thus, we can only respond to this question from the perspective of Wales.

Whilst there seems to be nothing of contention in the Bill that would undermine the devolved powers of the Welsh Assembly, we feel it important that the future IRB works closely with Cardiff, and Edinburgh, to ensure cross-border coordination. Passengers should see continuation and similar standards of service when passing between nations.

11. 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?

We don't have a particular view on the Luxembourg Rail Protocol.

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

We are concerned about the independence of the IRB if there is a delegated power for the Secretary of State to make provisions 'for and in relation' to rail markets. To have this 'Henry VIII' clause in the bill unnecessarily questions the authority of the future integrated rail body, and has the potential to undermine the future operation of the body. Whilst we recognise the need for

legal recourse if the integrated rail body is not running efficiently or effectively, we do not believe this clause need exist.

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

As stated above, the reforms of the 1993 Act have brought improvements, greater investment, and increased passenger numbers. However, it is now clear that several aspects of the Act and subsequent legislation have not fulfilled their objectives. There needs to be centralised and coherent promotion of rail travel as a whole, rather than a focus on individual operators. This will lead to greater overall growth and usage of rail services.

The inconsistencies in reliability, fares, and quality of rolling stock that have arisen post-privatisation indicate the necessity for substantial reform. Ensuring consistency between services and operators is crucial for building trust among passengers and simplifying their journey. Services and fares should be easy to understand, thereby reducing confusion and increasing satisfaction among passengers.

The current system lacks mechanisms to encourage investment in expanding the rail network and increasing passenger usage. It is essential to identify and implement the right levers to incentivise both public and private investment. This requires a favourable regulatory environment offering financial incentives, or implementing other strategies to stimulate growth.

Overall, the lessons should underscore the importance of creating a coherent and efficient rail way that prioritises the needs of passengers and encourages the growth of freight, while also facilitating investment and innovation.

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

Open access operators were exempt from the Infrastructure Cost Charge (ICC) levied on franchised operators to fund Network Rail. The ICC now applies to existing and new open access providers, which makes running an open access service more expensive, as well as effectively raising the threshold for new revenue generation required for a track access agreement. The Committee should therefore focus its scrutiny on access charges to ensure open access operators are not priced out of the market, and the Plan for Rail's commitment to them is met.

One concern that the Committee might want to consider is whether the new Integrated Rail Body will be subject to Freedom of Information requests. Network Rail were not subject to Freedom of Information requests until 2015, and we are keen to ensure that the new body will be subject to FOIs.⁶

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Endnotes

¹ <https://gbrtt.co.uk/what-we-do/rail-freight-growth-target/>

² https://www.raildeliverygroup.com/files/Publications/archive/2013-07_growth_and_prosperity.pdf

³ Freight Britain, Rail Delivery Group, 2015

⁴ The Future for Open Access, ORR, 2018.

⁵ "Open Access" Competition Can Improve Intercity Rail, Catalyst, 2021.

⁶ <https://www.gov.uk/government/news/extension-of-freedom-of-information-act-to-network-rail>