

# RIA submission to TSC Scrutiny on the Draft Rail Reform Bill

## March 2024

### 1. INTRODUCTION

1.1. This is the Railway Industry Association's (RIA's) submission to the Transport

#### About the Railway Industry Association

- RIA is the national trade association for UK-based suppliers to the UK and world-wide railways. It has over 360 companies in membership in a sector that contributes £43 billion in economic growth and £14 billion in tax revenue each year, as well as employing 710,000 people. RIA's membership is active across the whole of railway supply, covering a diverse range of products and services and including both multi-national companies and SMEs (60% by number).
- RIA works with key rail stakeholders and politicians to promote the importance of the rail system to UK plc, to help export UK expertise around the globe and to share best practice and innovation across the industry. Rail is also a vital industry for the UK's economic recovery, supporting green investment and jobs in towns and communities across the UK; for every £1 spent in rail, £2.50 is generated in the wider economy. RIA also works with Women in Rail on a joint EDI Charter, which works to support social mobility, grow UK STEM skills, create local opportunities, and increase the talent pool from which the future leadership of the rail sector will be drawn.
- For its members, RIA acts as the representative of the supply industry's interests to Government, regional and national transport bodies; provides technical, commercial and rail policy information; promotes exports in partnership with DBT; and produces thought leadership on key issues and opportunities facing the UK rail industry.

Select Committee's (TSC) pre-legislative scrutiny of the Draft Rail Reform Bill.

- 1.2. **Overall, the draft legislation is welcome and necessary to create a single guiding mind that is empowered and accountable.** Reform is needed to address the fragmentation, unclear accountabilities and a lack of strategic direction that were identified in the Williams Review.
- 1.3. **RIA wants to see reform happen soon, and in a planned way.** Removing delays to reform means removing uncertainty over the future structure of the sector. The proposed designation of Network Rail Infrastructure Limited (NRIL) as the Integrated Rail Body (IRB) will help minimise disruption during the transition because it avoids the need for costly and complex transfer of supply chain contracts to another body.
- 1.4. **There is now a crucial window (Spring to Autumn 2024) to review and strengthen the draft legislation.** Simple amendments will help the Bill

address the problems identified in the Williams Review, mitigate the risks of the new structure, and provide greater confidence to both private businesses and other public bodies to invest in rail.

**1.5. For the reforms to be effective, getting the relationship right between**

**the Department for Transport (DfT) and the IRB is fundamental.** There must be clearly defined responsibilities. Broadly, the IRB must be responsible for planning and delivering the railway in partnership with

**Specific proposals to strengthen the draft legislation:**

- **Remove the Secretary of State's (SoS) open-ended power of direction.** This creates a significant risk of ad-hoc intervention in operational railway matters, which would undermine the IRB's accountability and create uncertainty for any party wishing to invest in the railway. If there is a specific need for an additional power beyond the extensive governance powers the Secretary of State (SoS) already has, this should be much more narrowly drafted to meet that need.
- **Introduce a legal requirement to produce a long-term strategy for rail,** updated at each five yearly periodic review. The IRB should produce a long-term strategy (25-30 years) in response to a strategic remit from DfT, with the strategy then approved by DfT. The periodic review should test consistency between the strategy and the five year plan. This will help give the railway much needed strategic direction: long-term certainty encourages investment and innovation. Without a clear legal requirement there is no guarantee the industry will ever have a clear strategy, since despite good intentions, there has still not been one published.
- **Make the most of the IRB's licence to set out enduring accountabilities.** The Government aspirations to attract private investment are welcome, but on their own, the proposed clauses, e.g. to require an annual report on progress, are unlikely to have the desired effect. To boost investment and drive down costs, what is needed is clarity over future upgrades to the railway, and for the IRB to be held accountable for planning and promoting a healthy and competitive supply chain in the long-term. Both could be easily achieved through amending the mandatory content of the licence:
  - Alongside an approved long-term strategy, **the IRB's licence should require it to set out the future needs of different sections of the network, and options for enhancing the network.** The Government has not published its promised Rail Network Enhancements Pipeline in four and a half years. Moving to a system where the IRB must routinely publish such information will help suppliers prepare, reducing costs and supporting innovation.
  - **The licence should contain a condition to promote a healthy and sustainable supply chain.** Making this a legal requirement will make it an enduring accountability.
- **Align the IRB's licence updates with the five-yearly periodic review process,** and introduce safeguards to deter regular licence changes outside of this period. As currently proposed, the SoS can change the licence easily at any time, subject to a short consultation. Additional safeguards will promote greater certainty for those wishing to do business with the IRB.
- **The TSC should also test the extent to which the IRB licence, as legally constituted, is capable of provide a comprehensive reflection of the IRB's accountabilities.** This is important so that oversight by the Office of Rail & Road (ORR) also takes a whole-system perspective, rather than focusing on individual elements. To the extent the IRB licence cannot legally encompass all the desired responsibilities, a legal amendment should be considered to rectify this.
- **The TSC should ensure that the proposed powers to amend legislation in future should be kept to the absolute minimum necessary to ensure an effective legal framework.** Certainty over the future legal framework is a key requirement for investment confidence in any sector.

businesses, devolved and regional governments and authorities. DfT should provide clear objectives, constraints and oversee and hold the IRB to account. Too much control from either DfT or the IRB could stifle innovation and investment. The current proposals can be strengthened to provide safeguards and facilitate a healthy relationship. Our key proposals are summarised below.



## **2. THE NEED FOR REFORM: KEEPING SIGHT OF THE ORIGINAL PROBLEMS**

**2.1. RIA supports the vision in the Plan for Rail for a single guiding mind – across track and train – that is both empowered and accountable.** To get the best railway, and secure value for money for fare payers and taxpayers, it needs to be planned as whole system and for the long-term. A unified approach to overseeing both costs and revenues, today and in the longer-term, is a prerequisite for progress.

**2.2. The draft legislation is welcome, and necessary, to create such an entity but can, and should be, improved, to make sure it genuinely serves the purpose it was designed for.** In reviewing the legislation it is important not to lose sight of the reasons that triggered the Williams review in the first place, with roots in the May 2018 timetable failure and failures of the franchising system. In particular, the problem statement identified by the review identified that:

- “The railway has become fragmented and accountabilities are not always clear”
- “Over recent years [the railway] has come to lack a single strategic direction”

**2.3. The draft legislation can help address both of these problems, but could be significantly more effective with some simple amendments.** It can also be strengthened to better support the Government objective of encouraging private investment.

## **3. REMOVING FRAGMENTATION**

**3.1. Rail reform has the potential to reset responsibilities and is a huge opportunity to shift the DfT’s role back to strategic oversight and holding to account, whilst integrating the oversight of core railway functions in the IRB for a better-run railway.** The context for the railway changed significantly during the Covid pandemic, with unprecedented Government intervention. Central government (both DfT and the Treasury) are more involved in the detail of running the railway than at any time since privatisation, with detailed decisions on enhancement schemes, train operations and rolling stock sitting within central government, and separately from decisions on infrastructure.

**3.2. It is essential that the IRB is required to produce an integrated business plan,** covering track and train operations, and that the IRB’s licence similarly reflects its responsibilities across track and train. This will

hardwire whole system thinking in the IRB. It is also needed to ensure ORR's role in holding the IRB to account looks at whole system outcomes, and not just at a portion of the IRB's responsibilities, which would then distort its incentives to focus on performance against 'regulated' functions.

- 3.3. **The TSC should also test the extent to which the IRB licence, as legally constituted, can provide a comprehensive reflection of the IRB's accountabilities.** If not, an additional legal clause reflecting the special nature of the IRB's licence should be considered.
- 3.4. **As part of the scrutiny process, the TSC will need to establish which specific functions would be devolved to the IRB, and what will remain with the DfT, to test whether the legal framework is effective.** The proposals are clear that infrastructure management and commissioning of train services will sit with the IRB. However, it is important to understand the split of responsibilities on enhancements, rolling stock, fares and ticketing, and in developing long-term plans to be able to establish the future accountability relationship between the DfT and IRB. Where significant functions remain with DfT then there will need to be a very clear framework for how those are exercised in coordination with the IRB's own functions. Aspects of this may need to be reflected in the legal framework, for example in the scope of the IRB licence.

## 4. CERTAINTY TO ATTRACT INVESTMENT

- 4.1. **RIA would like to see reform happen soon, and in a planned and staged way.** Removing delays to reform means removing uncertainty over the future structure of the sector and its leadership, which would help business investment confidence.
- 4.2. **We support the designation of NRIL as the IRB, notwithstanding that it will need a distinct and new culture from Network Rail.** RIA has highlighted the need for a smooth transition to GBR, and no hiatus of work, which is crucial to value for money as well as business confidence. Creating the IRB out of NRIL, as proposed, is the best way to minimise disruption because it avoids the need for costly and complex transfer of supply chain contracts to another body.
- 4.3. **We welcome the intention to encourage greater private sector investment. The legal clauses here are welcome but need to be supplemented with arrangements in the licence to make sure they will have the desired effect in practice.** They simply require transparency over efforts to boost private sector participation, but in the absence of a clear plan it will be hard to judge whether there is progress.
- 4.4. **The most significant steps that would boost private investment – and also drive down costs – would be greater clarity over future upgrades to the railway, and for the IRB to be held accountable for planning and promoting a healthy and competitive supply chain in the long-term.** The Government has not published its promised Rail Network Enhancements Pipeline (RNEP) in four and a half years. Moving to a system where the IRB must routinely publish such information will help suppliers prepare, reducing costs and supporting innovation. It would be easy to enshrine these in the legal requirements for the IRB licence, making them an enduring accountability:
  - Alongside an approved long-term strategy, the IRB's licence should require it to set out the future needs of different sections of the network, and options for enhancing the network.
  - The licence should contain a condition to promote a healthy and sustainable supply chain.
- 4.5. **There need to be safeguards so that businesses have the confidence to invest for the long-term, and incentives to innovate for the benefit of the railway.** To attract investment in the rail sector, either by businesses or other parts of the public sector, there must be trust that decisions will be taken in the interests of the whole system, and in particular, not in the



short-term financial interests of the IRB which will of course be subject to budget constraints. The Government consultation and legislative proposals rightly recognise the importance of a thriving private sector market, working in partnership with the public sector. Businesses decisions to invest in the skills (e.g. apprenticeships) and equipment (e.g. new machines or facilities) and bid for contracts will depend on confidence in the future of the industry, particularly:

- Whether there is a clear and credible plan that they can see will be delivered; and
- Whether the ‘rules of engagement’ for how they supply to the railway are stable (e.g. avoiding significant unexpected changes around access rights or to the IRB’s approach to outsourcing).

## **5. SECRETARY OF STATE POWERS**

### **5.1. RIA agrees that the IRB must be ultimately accountable to the SoS.**

However, the extensive suite of SoS powers in the draft legislation risk creating unnecessary uncertainty for any parties who might wish to invest in the railway, particularly the power of Direction. The draft legislation provides the SoS with powers to:

- Amend railway legislation (both primary and secondary legislation),
- Amend the IRB’s licence (subject to consultation), and
- Issue directions and guidance to the IRB on the manner in which it exercises its functions (subject only to a transparency requirement to publish directions).

Collectively, these mean that huge discretion sits with the SoS to change both the ‘rules of the game’ as well as alter the nature of the specific operational decisions that the IRB takes.

### **5.2. The proposed power to issue ‘directions’, however well-intentioned, creates the risk that a future SoS may intervene in the operation of the railway, undermining the IRB’s autonomy and fragmenting decisions.**

The power is drafted to allow the SoS to “from time to time give to the IRB directions ... about the manner in which it is to exercise its functions”, therefore sanctioning ad-hoc and hands-on management of the railway. The DfT intent is that directions will not cut across the licence or reopen funding settlements and only be used in specific circumstances. However, given the recent history of extensive Government involvement in the railway matters, it is plausible that there will be continuing temptation,

given there is often political pressure to be seen to be doing something, for the DfT to continue 'stepping in'.

- 5.3. **The power to direct the IRB detracts from the SoS's proper role in overseeing and holding the IRB to account: intervention takes control away from the IRB, and means they cannot be held accountable for their actions, or any wider consequences of a direction (which may not be anticipated at the time).** The SoS power to issue guidance, which the IRB would have to have regard to, but not necessarily implement, is less problematic, because it does not override the IRB's autonomy and therefore accountability over decisions. Instead of a power of direction, the proper routes for DfT governance and accountability should be:
- The appointment or removal of IRB leadership and Board;
  - Approving a long-term strategy for rail, including clear objectives and constraints (e.g. funding);
  - The five-year periodic review process;
  - The approval of regular IRB business plans including specific objectives; and
  - Ad hoc guidance (as proposed in the draft legislation).
- 5.4. **The TSC should test whether the DfT genuinely has a clear case for any governance levers beyond those above,** and particularly levers which enable the SoS to intervene on an ad-hoc basis in operational matters. It is not clear what is the case for any additional intervention powers beyond those the SoS has today in respect of Network Rail. If the Committee establishes a clear case for additional powers, for example if the SoS wishes to prescribe rail fare increases, then the powers should be drafted much more narrowly to reflect the specific need, and not provide a general power of intervention in the operational railway.
- 5.5. **Powers to amend legislation in future should be kept to the minimum necessary to ensure an effective legal framework.** RIA does not have an expert legal view on the extent to which these clauses are required. However, the TSC should test this rigorously, weighed against the potential disbenefit of uncertainty for the sector. A stable legal framework is one of the most important prerequisites to attract investment.
- 5.6. **It is very important that powers to amend the IRB licence, as proposed, should be subject to consultation. It is also desirable to avoid a situation where there are frequent ad-hoc licence changes.** It would be desirable

to align licence updates with the five-yearly periodic review process, and introduce safeguards to avoid regular licence changes outside of this period (although not making changes impossible). Potential safeguards could include a longer consultation period, or an independent opinion on the implications of proposed licence changes (e.g. by the ORR).

## **6. LONG-TERM STRATEGIC DIRECTION**

- 6.1. RIA welcomes the retention of the five year periodic review framework in the legislation.** This is an important element of stability which the rail sector benefits from today, allowing a degree of certainty over funding levels for maintaining and renewing long-lived infrastructure assets.
- 6.2. A clear and credible long term rail strategy would establish clear direction for GBR and support certainty for wider investment in the railway** by providing a longer planning horizon. Given the life of rail assets can be many decades, a long-term strategy, and accompanying plans, is essential for a well-run system. A credible long-term strategy for rail should also serve as confidence boost for businesses to invest in skills, equipment and innovation to meet the needs of the future railway. All the evidence we have seen suggests that longer term planning horizons reduce costs and help ensure healthy competition.
- 6.3. There is nothing in the draft legislation to require a long-term strategy for rail. Without a legal requirement, we may never see one.** It is entirely understandable that during Covid, the railway would not have a long term strategy. However, despite the best intentions of the Government and GBR Transition Team we still have no long-term plan several years after the need for such a strategy was explicitly recognised by the UK Government. There may also be times when it is politically more difficult to publish a long-term strategy, as a clear strategy will highlight difficult trade offs. Therefore a legal mechanism requiring publication is desirable.
- 6.4. A clear strategy would support whole-industry collaboration across the sector. In contrast, the absence of a long-term strategy makes tactical ad-hoc interventions more likely, undermining effective accountability.** Without an agreed direction, the basis for the relationship between DfT and the IRB will not be as clear as it could be, and in the absence of a clear line of sight from clear strategic objectives to operational decisions, it may be harder for the GBR to operate as intended.
- 6.5. The TSC should examine ways in which the publication of a long-term rail strategy is made a legal requirement.** This would need to reflect the

role of the DfT in setting a strategic remit, providing overarching objectives such as aspirations for the overall modal share of rail for freight and passengers and the decarbonisation contribution of the industry. The strategy should be updated every five years, which would align well with the periodic review process and avoid short-term tactical updates. RIA's suggestion would be for a legal requirement for the IRB to publish an updated long-term strategy as part of the five-year periodic review (in response to the DfT providing a strategic remit as part of, or alongside, the HLOS), although there may be other ways to achieve this aim.

- 6.6. **Alongside the approved long-term strategy, the IRB should be required to set out details about the future needs of different sections of the network, and options for enhancing the network.** Today's railway would benefit from a return to publishing the long-term 'route utilisation strategies' that set out long term needs on key routes. Similarly, the Government remains – in theory – committed to publishing an enhancements pipeline to give certainty to suppliers, yet with the RNEP not being updated we have not seen this in over four years. If the IRB were tasked with developing these plans, and a set of options on enhancements, this could then be presented to the SoS for strategic choices around political trade-offs.

March 2024