

Response to Call for Evidence for Scrutiny of the draft Rail Reform Bill

Submission by the Chartered Institute of Logistics and Transport UK

The Chartered Institute of Logistics and Transport UK (CILT) is a non-political institute that provides insight into pivotal decisions and policies. Our responses emanate from the extensive collective knowledge and expertise of industry experts from CILT's members and focus on delivering prosperity for the United Kingdom. We would be very happy for you to engage with us if there are any answers to your questions that you may wish to develop.

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?

The draft Bill sets out primary legislation for the creation of the IRB by enabling the redesignation of Network Rail and making it the franchising authority for England, with provision for it to become the franchising authority in Scotland and Wales.

We recognise that this is the fastest way to set up an IRB (Integrated Rail Body) through legislation. The IRB's activity, independence and governance will critically depend upon the Directions and Guidance (D&G) issued to it by the Secretary of State of Transport (SoS) along with the resources made available to it.

Significant transport funding and specification is devolved to the nations and many regions of UK. The Bill is not clear as to how the SoS will work with devolved bodies to deliver integration of rail leadership across the whole of Britain.

To achieve success change needs to ensure that delivery of rail services is the responsibility of the IRB and the industry, with governments setting high-level strategy and policy, and defining funding arrangements.

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?

There is nothing within the Bill which, by itself, can deliver the Government's aims. Until proposed D&G are developed, we cannot comment as to whether the IRB will be sufficiently empowered and organised to act as a guiding mind in the delivery of desired outcomes.

We support the fact that the Bill is not prescriptive in this regard, given that primary legislation should not constrain change or require constant modification. The IRB must be adaptable and flexible in its delivery, while ensuring that future changes are possible, particularly as markets change, both within the transport sector and with respect to wider policy.

But there are risks. The SoS has said that when created, the IRB will be a "thin controller" organisation and for it be more of a guiding than a controlling mind. If IRB's D&G are not clear as to the extent it is responsible for delivery there remains the possibility of intrusive

micromanagement and perpetuating confusion as to accountability. We remain concerned that IRB will struggle to achieve the high, and at times conflicting, expectations the sector and stakeholders are placing upon it.

Many of the desired policy outcomes do not require the creation of IRB. It is therefore disappointing that these have not been progressed already. We recognise the urgency of change to provide coherent leadership and management, but are concerned that a focus on structural arrangements will not address current challenges and opportunities for the sector.

With regard to the specific outcomes raised in the question:

(i) Better accountability

The IRB could be a clear, identifiable focal point for delivery within the sector, allowing industry expertise and leadership to implement the reform programme. However clarity is needed on what the railway is to deliver.

The draft bill sets out that IRB is solely accountable to the SoS. Without a defined, statutory role for devolved funders and authorities to provide a single set of D&G, there is a risk that competing requirements could erode the concept of a national network, and create tension across network, regional and local priorities. The IRB should not be burdened with conflicting objectives set by the Secretary of State and devolved authorities that it is not empowered to resolve.

However “thin” the IRB is intended to be, the network will continue to require a strong central capability to manage access and planning, building on Network Rail’s System Operator current role. This accountability will need to be clearly set out in D&Gs that provide stability as well as flexibility to allow the industry to focus its expertise.

The draft Bill allows for flexibility in government policy in the future, but within this structure, to create better accountability we believe there should be stronger duties placed on the SoS in the setting of direction and guidance to ensure greater transparency and a duty to promote collaboration across Britain.

There is no provision in the Bill to change the requirement for the SoS and Scottish Ministers to set out their outputs and funding specifications for the infrastructure (the HLOS/SoFA process). The Williams review identified the lack of alignment of industry costs and revenue, and in the absence of clarity as to how the HLOS and franchising processes will interact we are concerned that this aspiration will not be addressed by the current Bill.

(ii) More reliable services and

(iii) Greater efficiency:

As stated, the draft Bill does not in itself support these outcomes, although it may enable them.

The industry needs to be supported in driving changed behaviours and with much closer alignment between train operations and the infrastructure, with a view to maximising net revenues and delivery of the strategic outcomes defined by high-level D&Gs.

The IRB awarding passenger contracts in itself is not a panacea – although it will allow a guiding mind to operate in a network context, addressing the requirements of the whole industry – including devolved authorities and freight operators, as well as taking into account the wider requirements for the sector.

As much of the existing contractual and regulatory frameworks will remain, it is not clear to us that the draft Bill and the IRB will be able to drive sectoral efficiency.

(iv) Coordinated growth for passenger and freight:

If D&Gs are set to allow the IRB to lead delivery it has the potential for success, but the draft Bill does not provide clarity as to how IRB will operate. There is already a 75% freight growth target defined, by 2050, and this will need to be considered by the SoS in setting the IRB's objectives.

Rail's funders and stakeholders are wider than the SoS, and the IRB needs to manage the network accordingly. Optimal use of the network will require choices and trade-offs to be made, and the IRB will require decision criteria that reflect wider political and strategic requirements. In order to encourage third party investors, particularly from the private sector, longer term goals will be needed and stuck with.

The decision on the extent to which passenger services are competitive or co-ordinated is primarily political. It should be recognised that rail is a minority mode and that road remains dominant – so achieving modal shift through coordination should be an option that is available at all levels of rail operation.

Freight is already delivered in a competitive environment both in the wider logistics market and on the network. Recognising that there are now specific growth targets for freight set by both primary specifiers, the D&G and licence arrangements for the IRB will need to reflect this and allow decisions to be taken that support this.

<p>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?</p>
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We note that the draft Bill is not supported by a clear exposition of how the SoS will develop strategies, engage with devolved funders, and provide coherent, stable, and transparent objectives with appropriate funding through the D&G and HLOS processes. This will allow for operational independence in delivery of strategic outcomes. We remain clear that the IRB needs to be held accountable for delivery of the sector's outputs and that government involvement should be sufficiently high-level to support the industry in generating its own efficiency and operational improvements.

The IRB's governance arrangements should set out how its objectives and accountabilities will be delivered by the SoS, in a way that maintains its independence from the SoS. The current industry structure is complex and process-driven, and we would expect that there will be simplification in interfaces and a reduction in transaction costs across the sector.

At present, HM Treasury takes all revenue risk for directly-contracted English passenger operations. HMT concerns over risk and funding have resulted in decisions focused on net cost

rather than net revenue, and they have been taken in isolation from the wider network opportunities, especially around freight, where investment that would improve the industry's net financial position has been blocked. We would expect the IRB's establishment to provide more scope to take commercially-informed decisions.

It is right that Government will wish to decide whether to provide new rail outputs requiring increased government funding, but an independent IRB should be able to promote investments that improve efficiency or deliver improvements within an overall funding envelope. British Rail was subject to an External Financing Limit but had the flexibility to decide and work within this limit, although this did not provide the stability that the HLOS/SoFA arrangements have given for planning infrastructure operations, maintenance and renewal.

The Bill does not set out any requirement to simplify funding routes and money flows within the railway. It has not taken the opportunity to examine whether fares, track access charging and the current investment framework could be reformed alongside the establishment of the IRB, especially where requirements are currently enshrined in primary legislation. These should be reviewed in parallel to the establishment of IRB, for example the provisions of the 1993 Railways Act with respect to fares regulation, or the detailed operation of the HLOS process.

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?

Our view is that there needs to be a robust process for granting licences. As the IRB will remain an integrated infrastructure manager across England, Wales and Scotland, its licence must reflect that there are two specifying funders. The licence, once established, will need amendment to reflect changing markets, legislative and regulatory frameworks, as well as learning from the lessons of implementation.

As the SoS is to grant and have the ability to amend the licence, the same degree of consultation and scrutiny needs to apply as to D&G, to ensure a transparent process that drives safety, efficiency and innovative approaches, while protecting freight and other access rights holders. Specific conditions, as set out, are required to ensure that IRB is held accountable for output delivery.

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?

The balance between public and private sector is a political choice. There are advantages in maximising private sector involvement under the guidance of a public body, but the clear focus needs to be on delivery of the right outputs for users and funders. An increase may not always be an appropriate outcome, and we consider that its reporting should focus on changes and opportunities.

It is imperative that the IRB creates the right climate for private sector investment, particularly in freight, where it should be required to report on how this has supported the delivery of terminals, infrastructure and rolling stock, alongside its impact on the overall growth target.

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

The IRB's business plan has to have a clear process of engagement, consultation and review. We consider that, given the involvement of third parties in the rail sector, that the Office of Rail and Road (ORR) should be engaged in ensuring that the IRB develops plans that both reflect its directions and guidance and its statutory and commercial obligations.

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

We consider that the setting of D&G by the SoS are critical to the success of IRB. Recognising existing and future devolution to the nations and regions, as well as opportunities for private investment, we consider that the D&G process requires statutory consultation and engagement with these parties.

Given that the draft Bill focuses on the establishment of the IRB, the SoS should bring forward evidence that the enablers to support its aims are in place.

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

It is not clear at present to what extent the draft Bill builds on existing promotion of passenger and freight users. For freight there is a clear policy objective, which will need to be aligned with the overall D&G for the IRB.

The Bill does not propose changes to existing passenger engagement and representation (including in any meaningful way on accessibility and inclusion). Until the D&G are developed we cannot be confident that the IRB will be able to deliver the desired outcomes.

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

We recognise that the IRB is intended as a "guiding mind" for the railway, accountable to the Secretary of State for Transport. The Office of Rail and Road and its predecessors have provided oversight to the industry since 1994.

We have a specific concern around the wording proposed in Clause 4 of the draft Bill, adding the wording "so far as such competition does not unreasonably increase the cost to public funds of providing railway passenger services". It may, unintentionally, introduce risk for and deter private sector freight investors. This may endanger freight growth and other policy targets.

Given that the SoS will not specify, and that the IRB will not own or control the whole railway sector, there remains is a role for assurance that it is acting in accordance with its statutory duties and its wider objectives, and promoting the public interest.

The draft Bill allows the SoS to prioritise the outputs that they have specified, to the potential detriment of others who hold rights to fund or use the network. The ORR is an important part of assurance, and its role needs to be central to providing confidence in the delivery of change.

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?

In recognising that there is the potential for the IRB to award franchises and contracts on behalf of Scottish and Welsh ministers, this is welcome. Clarity is needed on the IRB's governance, as well as how the IRB will manage funding streams. As the matter is devolved, it will be a matter for the relevant governments to decide whether they wish to do so. It is sensible to include provision for this rather than subsequently changing legislation.

This approach could also support further devolution within England which would enable responsibility for decisions about local transport issues to be made locally.

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 welcome the inclusion of the Luxembourg Rail Protocol, which came into force internationally on 8 March 2024, into the act. By establishing a clear framework for registering interests and managing claims for lessors and financiers in railway rolling stock, this should enable the realisation of cost savings for new rolling stock financing in the UK rail market.

In addition to savings for debtors and lessees, it will promote a harmonisation of the UK legal systems in respect to granting security over railway stock. This has the potential to encourage new investors to enter the UK rolling stock market as there is a clear understanding of the risks associated with such transactions.

A further benefit is the support it will provide to overseas rolling stock projects from financiers based in the UK, particularly as more countries accede to the terms of the Protocol. This is particularly important given the UK's position as a leading centre of global finance.

We consider that the range of powers should be sufficient to enable the implementation of the Protocol in the UK.

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

Until the D&G process and content are defined, we cannot be confident that the IRB will have sufficient operational independence from the SoS. The legislative framework for delegated powers cannot, by itself, provide assurance that the aims of the draft Bill will be achieved, and more engagement and scrutiny is needed. Proposals as to how IRB will be operationalised should be subject to consultation and engagement from both government and the wider industry.

With respect to the Luxembourg Rail Protocol, we consider that the delegated powers are sufficient to allow relevant secondary legislation to be introduced.

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

We welcome the renewed commitment to achieving change at pace, which, given the lengthy and detailed processes that have underpinned the draft Bill, should enable progress particularly on those areas that do not require legislation to commence.

Previous changes to the sector, including at the time of privatisation in the 1990s, have focused on institutional change at the expense of ongoing outcomes for users and funders. We have highlighted above areas such as fares regulation and the HLOS process where there is an opportunity to align responses to wider change with institutional developments.

Ensuring that the changes to architecture flowing from the draft Bill are robust to emerging requirements for the railway, avoiding further legislative change, would represent significant progress from the 1993 and 2000 Acts which in their operation were not sufficiently flexible to address what was required from transport, particularly when integrating systems and encouraging modal shift.

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

We consider that the Committee should seek clarity on:

- The relationship between the SoS's high-level responsibilities and the IRB's capacity to deliver its role as a guiding mind and industry leader,
- How the SoS will develop its overall D&Gs and how they will reflect the requirements for clarity and transparency as to the IRB's objectives and business planning.

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