

# Transport Select Committee call for Evidence: Railways Bill

## The Chartered Institute of Logistics and Transport (UK)

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### Introduction

The Chartered Institute of Logistics and Transport UK (CILT(UK)) is a professional institution embracing all transport modes whose members are engaged in the provision of transport services for both passengers and freight, the management of logistics and the supply chain, transport planning, government and administration. Our principal concern is that transport policies and procedures should be effective and efficient, based on objective analysis of the issues and practical experience, and that good practice should be widely disseminated and adopted. The Institute has a number of specialist policy groups, a nationwide structure of locally based groups and a Public Policies Committee which considers the broad canvass of transport policy. This submission draws on contributions from a number of these sources.

### A - Improving rail travel for passengers

The Bill provides a flexible framework to address emerging circumstances and aligns with broader government policies. Consequently, the decision-making processes and arrangements established within the Bill need to ensure the necessary resources are available to implement them effectively.

Within this context, the most relevant aspects of the Bill are:

- Governance: Setting goals, policies and requirements
- Finance: Train operations, infrastructure maintenance and enhancements
- Operations: Delivery and measurement

### Creating the right environment

Research by Transport Focus<sup>1</sup> shows the five most important aspects of their rail journey are: fares, punctuality, frequency, information, and there is sufficient room on board (or ability to get a seat). However, rail travel is often not a journey undertaken in isolation and is part of a wider journey experience. As such additional factors need to be considered:

1. **Integration:** Rail is part of a longer door-to-door journey, where passengers' experiences are influenced by access and egress and connectivity with other transport modes. These factors are only partly within GBR's remit, but appropriate arrangements can recognise and facilitate improvements. A greater obligation on GBR to work with and integrate rail services with other transport services supported by mayoral combined authorities and mayoral strategic county authorities supporting would be beneficial.
2. **Accessibility:** Accessibility to public transport is an economic and social imperative that needs targeted action to improve long-standing deficiencies in accessibility. We welcome the reference in section 18(2)(a) to the Ministers, GBR and the ORR exercising their

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<sup>1</sup> Britain's railway: what matters to passengers Transport Focus 2022

functions in a manner best calculated to promote the interests of users and potential users of railway passenger services, including, in particular the needs of disabled persons. However, this is one of a number of criteria, which are not weighted and we are concerned that the needs of disabled passengers could easily be overlooked if they are viewed as affecting railway service performance (such as taking additional time to deploy a wheelchair ramp).

3. **Boundaries:** The railway system in Great Britain is diverse, featuring various markets and differing physical and legislative arrangements. A single solution cannot meet all needs, nor should it. Passenger journeys often interchange between services and cross organisational boundaries, requiring specific arrangements to facilitate ease of movement across them. It would be helpful to see more detail on devolved services, particularly as there is no clear indication that all services designated by the Secretary of State under section 25 will be directly awarded to GBR under section 31.

## Governance

A subjective review of previous High Level Output Statements (HLOS) indicates that they often lack a comprehensive set of directions for the operator, though Scotland's HLOS has generally been more thorough. Ambiguities and gaps in objective setting can create uncertainty, lead to unintended actions, and diminish accountability, ultimately necessitating continuous government intervention.

In contrast, a fully comprehensive/holistic set of objectives enables a better division of accountability, with the government setting strategic direction and the GBR delivering through an operationally independent GBR. Including the eight aspects as a requirement for inclusion within the Transport Secretary's objectives as set out in a published statement of objectives (SO), along with any directions or guidance, will enable GBR to independently set out its plans. These plans may then be scrutinised by ORR as set out within the Bill. The Passenger's Council should be enabled and required to comment upon how the statement of objectives, directions, and guidance might impact the passenger experience.

These arrangements should equally apply to Scotland, and the requirement to consider "boundaries" should demonstrate how rail travel across the whole of Great Britain will be facilitated whilst respecting the will and powers of devolved authorities. This should include the impact of system-wide standards or arrangements on non-GBR operators.

## Finance

Objectives must be adequately financed. Proposed arrangements that maintain an administrative separation between the highly linked categories of train operations, infrastructure maintenance, and enhancements are likely to be sub-optimal, bureaucratic, and require continued detailed involvement by the government. These will reduce both GBR's autonomy and its ability to find efficient and innovative ways of achieving the stated objectives.

We recognise that many respondents to the Government's consultation valued the certainty provided by five-year settlements for infrastructure operations, maintenance, and renewal, but we believe there are risks associated with this, including the pressure to respond to the uncertainty of a longer (five-year) term by setting lower levels of funding and finding a more effective balance of available funds across all categories types of spend in intervening years to respond to changing conditions.

We understand there is a provision to combine the train operating subsidy and infrastructure funding, but recommend replacing the five-year requirement with a facility to reduce the settlement from five to three years if these funding allocations are combined.

We also recommend that a facility be given to allow enhancement funding to be similarly consolidated, so that the impact of other types of spend (both increases and potential efficiencies) may be considered in future years.

Fares are the most important aspect of the journey for passengers. They also account for a significant share of railway finances. High-level guidance should be explicitly included in objectives issued by the Secretary of State as part of the stated objectives and consolidated funding arrangements. This will enable GBR to autonomously balance the impact of individual fares with other aspects of service delivery and other funding sources. In this respect, it is also important to remember that devolved authorities have their own powers over fares.

Access Charges will be part of GBR's funding. The level will not only impact other policies, such as those for freight growth or arrangements for open access passenger operations, but will also be levied on operators that are the responsibility of devolved operators. As with fares, high-level guidance should be explicitly included in objectives issued by the Secretary of State as part of the stated objectives and consolidated funding arrangements.

### **Operations:**

With greater autonomy and consolidated funding arrangements, we would expect GBR to be in a stronger position to develop efficient passenger operations, but it is important that these do not negatively impact the operation of freight services. In establishing a freight growth target, consideration needs to be given to the times of when freight trains are operating and ensuring that there is a holistic approach to timetabling to consider whole journey effects, particularly for longer distance services.

GBR needs to be tasked with the overall accountability for reform, but if public transport modal share is to be increased there needs to be thought given to who leads on multi-modal ticketing and information standards. It may not sit with GBR, as in major conurbations more public transport is under the control of mayoral combined authorities. There is an argument that this should be an overall government responsibility, coordinating meaningful discussions with GBR and all relevant authorities. This should extend to timely information dissemination so that where delays occur alternative transport modes can be more easily and quickly identified to keep passengers moving. A network-wide standard for information feeds and quality assurance needs to be a priority – even if GBR has to set appropriate rules for interfaces with its distribution systems.

### **B - Network access**

Following the return of passenger franchises to, DfTOL some 30% of rail services will remain outside of GBR. However, there is little indication of how these operators will be able to obtain access to the rail network. Neither is there an indication of how secure that access is, particularly in the light of potential competition for paths against GBR's own passenger operations.

The current draft of the Bill (in clause 59) simply requires GBR to set out its policy about, and procedures for access to, GBR infrastructure for non-GBR train operators. While this should at some point be accompanied by documents setting out the process for applying for access there is currently no clear indication of what that access policy is. There appears to be no method of challenging the access policy of GBR only the incorrect application by GBR of its own access policy to an application for access by a third party. The role of the ORR in access disputes is also rather limited.

In the Institute's paper "Re-structuring Britain's railways" (issued 15 October 2023) we highlighted the need for transparency and clarity of decision-making – with published decision criteria and a continued independent role to the ORR in dealing with contested access applications. We have significant concerns that the currently proposed structure could create disparities in treatment between GBR and non-GBR operators, especially if the internal GBR simplification is not properly managed and the process is not sufficiently open.

In the case of freight, we were disappointed that the wording of the Railways Bill did not bear out the promise of the very positive and encouraging accompanying documents. However, we think a number of fairly small tweaks to the Bill could go a long way to addressing these concerns. A number relate to the risk of a future government, with a very different agenda, instructing GBR to adopt a much less supportive stance towards non-GBR operators, particularly freight. This risk is a major deterrent to private sector investors looking to make long term commitments in rail freight assets and infrastructure, which are vital to achieving Government's policy goals such as house building, productivity and economic growth

Firstly, in the context of the Growth Target, the wording 'have regard to' is far too weak and essentially allows GBR to consider the target but then ignore it in favour of other priorities. We would suggest, therefore, that Section 17 clause (4) be amended to read 'GBR must, when exercising its statutory functions, ensure it achieves - [subclauses (a) and (b)'. A possible weaker alternative would be 'gives significant weight to'.

Secondly, the proposed Capacity Duty in Section 63 effectively gives GBR carte blanche to prioritise its own current and future passenger services, plus its maintenance activity, over all other users of the network. This is unfair and a very long way from the even-handed approach promised in the accompanying documents. We would suggest that to support growth of freight access the addition of a new subclause (b) to clause 2 to read 'the achievement of the Freight Growth Target set out in Section 17 of this bill'. The current subclause (b) would become subclause (c).

Thirdly, clause 3 of the Charging scheme in Section 64 similarly gives GBR carte blanche to levy a higher access charge if it considers an efficient operator can afford to pay more. In reality this may provide a barrier to access if the operator cannot sensibly afford the proposed charges. Whilst there is also a (welcome) provision for GBR to levy lower charges in clause 4, this does not balance out the risk to customers of GBR levying a higher rate, which would be a major deterrent to private sector investment in Freight. The ORR's ability to prevent this happening is, in essence, limited to process and excludes the content of GBR's decision. We would therefore suggest adding a rider to clause 3 of 'consistent with achieving its Freight Growth Target, as set out in Section 17 of this bill'.

We believe that these changes will provide sufficient flexibility in the system to meet relevant freight targets without creating too much pressure on the system which results in a substantial waste of overall line capacity.

## C - Devolution

While the Railways Bill is UK legislation, the proposals appear to favour parts of England. Just over 30% of trains operated in Great Britain will remain outside GBR, yet few arrangements are being put in place to enable those operations to benefit from the integration of track and train, as strongly advocated by the government for services across much of England.

This 30% non-GBR cohort requires the continuation of some of the complexity that the headlines around GBR might suggest will be removed. The new legislation needs to cater for this, putting in place various provisions to manage the different types of train operator. The establishment of GBR will mean different things to different communities and businesses across Great Britain, and whilst the system may become simpler, it will still have some complexities.

The legislative history and subsequent arrangements for devolved services differ across Great Britain. This means there will be different governance arrangements in different regions and whilst the proposals for a Memorandum of Understanding (MOU) go some way to address concerns, they will not create an integrated railway in the way many people expect them to. Network Rail currently provides the rail infrastructure across most of Great Britain, and whilst this responsibility will be transferred to GBR, there is a risk that changes may weaken the whole GB-system aspect that the current arrangements provide and that devolved operators may be at a disadvantage because direction is proposed to be given solely by the Secretary of State.

The Institute's paper "Re-structuring Britain's railways" has argued that GBR should better reflect the devolved nature of transport whilst retaining its position as the 'controlling mind' for the network, able to balance national, regional and local needs. We advocate that, rather than direction being given solely by the Secretary of State, GBR's Board should include representatives of all funders and operators (including freight representatives) and that it is for the Board to issue the statement of objectives, guidance and other requirements alongside funding statements. Regional and local issues would be resolved beforehand, and GBR would receive a single set of objectives, guidance, and funding rather than having to work out how to balance potentially conflicting aspirations or requirements.

Indeed, such arrangements may enable integrated business units in both Scotland and Wales, thereby realising the benefits of combining track and train and reducing bureaucracy without reducing devolutionary powers. Such a proposal may not only address the current uncertainty surrounding how the Elizabeth Line, London Overground, and Merseyrail can fully benefit from GBR, but may also provide a template for arrangements as further devolution in England and the creation of Mayoral Strategic authorities evolve.

The effects of the Bill will be different in Scotland and Wales, as Scotland already has devolved funding and specification accountability under the 2005 Act. We understand that the Scottish Government is expecting no dilution of its current position and may look at opportunities for further devolution if the issue arises. Whether this is achievable within the legislation is difficult to determine, but clarity as to the extent of any further devolution would be welcome.

The governance of GBR is also a matter for striking the balance between “network” and “local” at all levels. It would be beneficial for the Bill to address how the GB Secretary of State develops their Directions and Guidance for GBR – simple accountability to the DfT is needed, but only if there is a process that can give devolved funders confidence that their requirements are hard-baked into setting GBR outputs. This can be scalable to the funding and pre-existing contractual/statutory arrangements, as well as flexible. The provisions within the English Devolution Bill permitting some mayoral combined authorities to become Established Mayoral Strategic Authorities (EMSAs) and request full devolution of local services and receive Integrated Financial Settlements for all local transport funding, including rail, seem to be a missing element within the Railways Bill. Coordinating, or at least acknowledging, the outputs of two Bills would be helpful.

A concern regarding devolution is that if there is a reforming push for devolved nations/region priority, the needs of cross-boundary journeys may be lost. Journeys where public transport is viable may not be easily apparent for passengers planning long-distance travel. A network-wide standard for information feeds and quality assurance needs to be a priority – even if GBR has to set appropriate rules for interfaces with its distribution systems.

As there will be a number of devolved parties providing rail services, there is merit in GBR receiving a ‘whole of Great Britain’ set of directions and guidance. This would make GBR a body responsible to all the funders of rail services. A solution would be to have a Strategic Board for GBR, with representatives beyond the Secretary of State. A pragmatic view might be to require the Secretary of State to include representatives from Scotland, Wales, London and Liverpool alongside freight, other open access representatives and the Passenger’s Council. There could also be provision to expand the representatives if EMSAs started running their own services, or to establish a representative for those bodies. While the Secretary of State would be expected to have a right of veto over certain board decisions, the Institute believes that obtaining the input from the major stakeholders through a Strategic Board would provide a more robust and inclusive direction for GBR.

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