

Updating the scope of the Railway Heritage Committee and updating its membership

Consultation paper

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1. Introduction and Background

Introduction

The Railway Heritage Committee (RHC) is an executive Non Departmental Public Body (NDPB) sponsored by the Department for Transport (DfT). It was established as such on 21 November 2005.

The role of the RHC is to “designate” records or artefacts relating to railways which are of sufficient interest to warrant preservation. Its members act voluntarily and are only reimbursed for expenses related to their activities. The Committee therefore relies on committed individuals to help it carry out its statutory duties.

The Chairman of the RHC, Lord Faulkner of Worcester, has written to the Department highlighting concerns related to:

- the constraints placed on the Committee by existing legislation, and
- that there is an increasing number of railway related companies outside of the RHC’s scope to carry out its function.

In addition, the last two appointment campaigns for an archivist member for the Committee have been unsuccessful due, in part, to the wording of current legislation.

The purpose of this consultation is two-fold:

1. to seek views on increasing the number of railway related bodies in the scope of the RHC, and
2. to seek views on proposals to update the membership of the RHC.

Responses to this consultation are requested by **5th September 2008**.

Background

Existing Legislation: Scope of the RHC

Section 1 of the Railway Heritage Act 1996 (as amended), provides for the Railway Heritage Committee to have railway organisations within its scope. Section 1(1) of the Railway Heritage Act 1996 specifies the bodies to which the Act applies. These are as follows:

- any company which was formerly a wholly-owned subsidiary of the British Railways Board
- any publicly-owned railway company
- any company which was formerly a publicly owned railway company
- the Secretary of State
- any company which is wholly owned by the Secretary of State
- any franchisee, and
- any franchise operator.

The Railway Heritage Scheme Order 2005 (which contains the “Railway Heritage Scheme”) is made under powers conferred by section 2 of the Railway Heritage Act 1996. The Order may be amended or revoked by a further Order.

This Order permits the Secretary of State to modify the list of organisations. This can be done by order made by statutory instrument. Before making such an order, the Secretary of State must consult the bodies to which the order will apply. Were such an order to be made this would be subject to the negative resolution parliamentary procedure.

Existing legislation: Membership of the Railway Heritage Committee

Paragraph 2(1) of the Railway Heritage Scheme¹, specifies that the Railway Heritage Committee shall continue to be established and, under paragraph 2(2) that the Committee shall consist of a chairman and not fewer than six other members, appointed by the Secretary of State. Paragraph 2(4) states that the Secretary of State shall ensure that, so far as is reasonably practicable, the members of the Committee shall at all times include:

- a) at least one person for the time being appointed under section 2(1) of the Public Records Act 1958(a)
- b) at least one person for the time being appointed under section 1(1) or (4) of the Public Registers and Records (Scotland) Act 1948(b)
- c) at least one person who appears to the Secretary of State, having regard to the views of the Board of Trustees of the Science Museum, to represent the interest of the National Railway Museum at York, and
- d) at least two persons (not employed by the same employer) each of whom is employed by one of the bodies to which section 1 of the Act applies.

¹ Set out in the Schedule to the Railway Heritage Scheme Order 2005, (S.I. 2005/2905).

2. Issues

Scope

The RHC has growing concerns that more and more railway related businesses are falling outside its scope. This is because they are largely new and do not fall within the categories or broad business definitions listed in section 1(1) of the 1996 Act. Some examples include the Railway Standards & Safety Board, Heathrow Express, Hull Trains, GB Rail Freight, and Direct Rail Services.

Other organisations are not in scope as they appear to have been simply overlooked at the time existing legislation was made. For example:

- The British Railways Board and any subsidiaries who were overlooked in the Railway Heritage Act
- The British Transport Police Authority – since its independence of the Strategic Rail Authority
- Former franchisees/franchise operators which evidence suggests still hold important records
- Railway unions that may hold important records that have had a significant impact on the railway.

Aside from these, there are many other owners and operators of rolling stock on the national railway network, together with other important railway related industry players, who are excluded simply because they were never subsidiaries of the British Railways Board.

Membership

The ability to attract and recruit people with the right skills to contribute to the RHC is vital in helping the Committee to deliver its statutory obligations. The skills and experience to understand how records should be preserved and presented for public consumption is a key skill that can help the Committee in its day to day activities.

The Department has been unsuccessful in two recruitment campaigns where we have tried to attract interest from people who could be appointed under section 2(1) of the Public Records Act 1958 (a). We have the situation where people have applied to become a member of the Committee but because they no longer work for the National Archives cannot be legally appointed in this capacity. We accept that archiving skills and policies are in continuous development and that people's experience can get outdated quickly. However, we feel this situation is disadvantaging the Committee.

3. The Proposals

Scope – to add to the number of railway related bodies within scope of the Railway Heritage Act 1996

We are interested in your views to help ensure the RHC delivers its statutory obligations and designates records or artefacts of sufficient interest to warrant preservation.

We have developed the following options for updating the scope of the RHC:

- Option 1 – Do nothing
- Option 2 – Consider voluntary agreements with railway bodies specified by the RHC
- Option 3 – Add to the list of bodies in section 1(1) of the 1996 Act as per the recommendations of the RHC.

Option 1 – Do nothing

If the Railway Heritage Act 1996 is not updated there is a risk that records and artefacts of historical significance will not be protected for future generations.

There could be social implications associated with the loss of historical records and artefacts. There could be issues of Government not providing a level playing field, as some railway related businesses would have greater commitments placed on them than others who are not within the scope of the RHC. There is at least one provider of services to the railway industry that expressed feelings of being unfairly burdened compared with others in the same line of business.

For these reasons we do not believe that Option 1 offers a viable way forward.

Key Questions on Option 1

Do you agree that option 1 is not satisfactory? If you think there is no need to update the legislation, please explain why.

Option 2 – Consider voluntary agreements with railway companies

This option would have the benefit of providing administrative savings through not having to amend section 1(1) of the 1996 Act. The scope of the RHC's work could in practice be extended with the agreement of those affected.

However, to operate outside the legislative framework would give rise to legal ambiguity and potential administrative confusion in the work of the RHC. Parliament, in the Railway Heritage Act, has provided a mechanism for the addition of bodies to the remit of the RHC by way of negative order. It would seem strange to depart from this legislative framework to seek to achieve the same end and to have two schemes of regulation (one statutory and one voluntary) running concurrently.

In effect, there may be practical difficulties in seeking to replicate the effects of the legislation by agreement and this could actually be more burdensome on the Committee. For example, the rules relating to record keeping and minutes, the rights of members to be reimbursed out of pocket expenses and the right of the Committee to receive funding for administrative and secretarial assistance would not apply to work done outside the statutory framework of the Act and Order.

Finally voluntary arrangements can be terminated and so would not be as robust and reliable, certainly in the long term, as the legislative arrangements.

For these reasons, we do not believe that Option 2 offers a viable way forward.

Key Questions on Option 2

Do you agree that option 2 is not a viable way forward? If you think voluntary agreements are viable, please explain why.

Option 3 – Add to the list of bodies within scope of the Act as per the recommendation of the RHC

Those railway related businesses that have been established since the 1996 founding legislation will be brought into scope with responsibilities to engage with the RHC. They will take direction from them regarding their artefacts and records and the way in which these are preserved for future generations.

The RHC artefacts sub-committee recently undertook an informal review of the historical holdings (locomotives, coaches and wagons) of companies outside of the RHC's current scope. Of the 125 companies reviewed, around 50 held artefacts that might possibly be designated by the RHC if these companies were to come into scope of the Railway Heritage Act. These amounted to over 3,000 individual artefacts that potentially could be lost from our industrial archive.

The types of bodies that would need to be brought into scope are:

- railway related companies that do not hold a Government franchise to run a particular route
- rolling stock companies and railway maintenance companies created since the Railway Heritage Act was laid before Parliament, and
- any railway related bodies that are likely to hold relevant records.

We therefore believe that Option 3 is the best way forward.

There are two different approaches that we feel could meet our objectives of updating the bodies in scope of the RHC.

Option 3A – A specific list of individual new bodies

Option 3B – Additional descriptions of bodies, with a small number of individual bodies.

Option 3B is our preferred route as, almost inevitably, Option 3A would be a lengthy list of bodies that would still not be comprehensive if we were trying to define all bodies. There would be a risk of us being unable to maintain an accurate and up to date list. This in effect could mean that the RHC would need to come back to the Department with fresh nominations at regular intervals.

It is our intention not to include heritage railways as a part of these proposals as they are already regarded as the recipients of heritage material, and are subject to the rules of the Heritage Railway Association in terms of disposal of items.

Our analysis of the bodies that RHC believe should be brought into their scope shows there are broadly 3 categories:

1. Reinstatements (bodies that for whatever reason were not included in the previous legislation)
2. Extension of previous scope (historical franchises)
3. New – of which we judge there to be 3 sub-categories:
 - I. bodies or derivatives thereof that were in existence at the time of the 1996 Railway Heritage Act (eg, Docklands Light Railway, Metro)
 - II. new bodies that were not in existence at the time of the 1996 Railway Heritage Act (eg, RSSB)
 - III. private sector industry supply bodies (eg, Balfour Beatty, Catalis).

Advantages

We consider there to be the following benefits to bodies being brought into scope:

- Securing “their place in history” as helping to secure records and artefacts important for recording the cultural development of railways and Britain
- RHC advice and direction in relation to their proposals to dispose of records and artefacts that they no longer have a business use for
- Help bodies demonstrate social responsibility in caring for industrial heritage
- RHC can help make clear what assets can be disposed of to the rail market or deemed to be waste
- Encourage them to maintain or responsibly dispose of any designated artefacts.

Disadvantages

We have also considered the potential disadvantages to these and other railway bodies of being brought into scope. There may be minor costs in relation to the need for upkeep of designated records and artefacts. But it should be remembered that these costs, which on average we estimate would run at less than a few thousand pounds, are small in relation to the turnover of the businesses concerned.

Companies may be concerned that a third party can exert control over their assets. We need to be clear that the Act was made to ensure that historically significant records and artefacts were not lost. We are also clear that there have been few cases where the RHC has come into conflict with owners of artefacts or records that it has designated.

Therefore, it is proposed that Section 1(1) of the Railway Heritage Act 1996 be amended as below (those underlined being the new categories):

- a) the British Railways Board (“the Board”);
- b) any former or current wholly owned subsidiary of the Board;
- c) any publicly owned railway company (see note 1a);
- d) any company which was formerly a publicly owned railway company;
- e) the Secretary of State;
- f) any company which is wholly owned by or was formerly owned by the Secretary of State;
- g) any franchisee or former franchisee;
- h) any franchise operator or former franchise operator;
- i) any other current or former operator of passenger or freight services on the national railway network (see note 1b);
- j) any former or current owner, operator, or maintainer, of rolling stock that has run on the national railway network, excluding heritage railway organisations, museums, and private collections (see note 1c);
- k) the British Transport Police Authority;
- l) the Railway Standards & Safety Board;
- m) London Rail, London Underground, London Tram, and Dockland Light Railway, of Transport for London;
- n) any company that builds on or maintains the national railway network;
- q) National Union of Rail, Maritime, and Transport Workers (RMT);
- s) Associated Society of Locomotive Engineers and Firemen (ASLEF); and
- t) Transport Salaried Staffs’ Association (TSSA).

Note 1a: a “publicly owned railway company” is, in essence, a company wholly owned by the Crown and carrying on a former undertaking of the British Railways Board. (See Section 151(1) of Railways Act 1993 for full definition.)

Note 1b: “the national railway network” – lines owned or operated by Network Rail, London & Continental Railways Ltd (or derivatives thereof), the Secretary of State, including BRB (Residuary) Ltd, or Eurotunnel PLC.

Note 1c: “heritage railway” – “A railway which is operated to: (a) preserve, re-create or simulate railways of the past; or (b) demonstrate or operate historical or special types of motive power or rolling stock; and is exclusively or primarily used for tourist, educational or recreational purposes.” [The Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (SI no. 557/2006).]

Key Questions on Option 3

Do you agree that option 3 is a viable way forward? If not, explain why. If so which of variations 3A and 3B do you prefer?

Are there bodies not on the proposed list which you would recommend for inclusion in RHC’s scope?

Are there difficulties in defining descriptions of bodies that the revised legislation shall apply to?

Would there be any unintended consequences?

Membership – making changes to the legislation specifying the Membership of the RHC

As outlined previously, section 2(1) of the Public Records Act 1958(a) currently restricts the potential appointment of an archivist member to the Committee. On this basis we feel this situation is disadvantaging the Committee and would propose to change the legislation to allow the appointment of people who are able to bring current or recent knowledge of archiving; and of the archiving profession to the Committee.

By this we mean someone who works, or has worked in the last 10 years, in the archiving profession, or works as an archivist for an organisation whose primary aim is to maintain archives and records.

There are two ways we could seek to change the legislation:

- remove the requirement to have Members who are currently appointed under Public Records legislation in England and Wales and replace with a requirement for an up to date knowledge of archiving and of the archiving profession, and
- maintain the current requirement to have been appointed under the Public Records legislation for one of the jurisdictions, but extend it to those who have been so appointed within the last 10 years even if they are no longer so engaged [and additionally to those who are employed on archiving work by organisations whose primary aim is to maintain archives and records].

Our preferred option is the latter – to maintain the current requirement.

In addition, we are very mindful of the role of the National Archives in “setting standards and supporting innovation in information and records management across the UK”. Therefore the RHC, in carrying out its duties, would need to consult the National Archives on matters of policy because they advise the Government on information and records management. We intend to encourage the Committee to maintain close links with this body through keeping itself up to date with the changes that occur in archiving policy. In this we would require the co-operation of the Archiving profession.

Key Questions on making changes to the legislation specifying the Membership of the RHC

Do you agree with our proposal and why?

Do you disagree with our proposal and why?

What option do you prefer?

Are there other options that we have not considered?

4. A Summary of Consultation Questions

The following summarises the questions asked earlier in the consultation document (please answer at Annex C):

1. Key Questions on options for updating the scope of the RHC

Key Questions on Option 1

Do you agree that option 1 is not satisfactory? If you think there is no need to update the legislation, please explain why.

Key Questions on Option 2

Do you agree that option 2 is not a viable way forward? If you think voluntary agreements are viable, please explain why.

Key Questions on Option 3

Do you agree that option 3 is a viable way forward? If not, explain why. If so which of variations 3A and 3B do you prefer?

Are there bodies not on the proposed list which you would recommend for inclusion in RHC's scope?

Are there difficulties in defining descriptions of bodies that the revised legislation shall apply to?

Would there be any unintended consequences?

2. Key Questions on making changes to the legislation specifying the Membership of the RHC

Do you agree with our proposal and why?

Do you disagree with our proposal and why?

What option do you prefer?

Are there other options that we have not considered?

5. How and when to respond

1. Please send your responses by **5th September 2008** to:

Zach Stamps
Department for Transport
Rail Sponsorship and International Division
5/29 Great Minster House
76 Marsham Street
London
SW1P 4DR

or by e-mail to **zach.stamps@dft.gsi.gov.uk**

2. This consultation has been produced in accordance with the principles of the Government's "Code of Practice on Consultation" which are included at Annex A. An Impact Assessment has not been produced as we do not think that there will be any new burdens placed on business or local authorities as a result of this policy. If you think that there will be please let us know what they may be and we will develop an Impact Assessment if required.
3. A list of organisations/stakeholders that we have sent this consultation to is included in Annex B. If you have any suggestions of others who may wish to be involved in the consultation process please let us know.
4. A summary of responses to this consultation will be published on our website – www.dft.gov.uk – after the consultation period has closed.

Disclosure of responses

5. According to the requirements of the Freedom of Information Act (2000), all information contained in your response to this consultation may be subject to publication or disclosure. This may include personal information such as your name and address. If you want your response or your name and address to remain confidential, you should explain why confidentiality is necessary. Your request will be granted only if it is consistent with Freedom of Information obligations. An automatic confidentiality disclaimer generated by your e-mail system will not be regarded as binding on the Department.

6. All responses will be included in any summary of results, although individuals will not be identified. Names and addresses may be held in an electronic database of interested parties for the purpose of distributing future documents on similar issues. However, any such details on a database will not be given to a third party.
7. If you wish to view individual responses after the consultation period has ended, these will be available for public viewing for a period of six months at the DfT Library and Information Centre, Ashdown House, 123 Victoria Street, London SW1E 6DE. The Library is open Monday to Friday during office hours. Anyone wishing to inspect the responses is requested to telephone the Librarian on 020 7944 3039 to make an appointment (without which it will not be possible to gain admittance).

Annex A – Code of Practice on Consultation

The Government has adopted a code of practice on consultations. The code of practice applies to all UK public consultations by government departments and agencies, including consultations on EU directives.

Though the code does not have legal force, and cannot prevail over statutory or other mandatory external requirements (eg, under European Community Law), it should otherwise generally be regarded as binding unless Ministers conclude that exceptional circumstances require a departure.

The code contains six criteria. They should be reproduced in all consultation documents. There should be an explanation of any departure from the criteria and confirmation that they have otherwise been followed.

Consultation criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time-scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

A full version of the code of practice is available on the Better Regulation Executive web-site at: <http://bre.berr.gov.uk/regulation/documents/consultation/pdf/code.pdf>

If you consider that this consultation does not comply with the criteria or have comments about the **consultation process** please contact:

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Consultation Co-ordinator
Department for Transport
Zone 1/33 Great Minster House
76 Marsham Street
London, SW1P 4DR
email: consultation@dft.gsi.gov.uk

Annex B – List of stakeholders

- Association of Train Operating Companies (ATOC)
- Adtranz
- Alstom
- Amec
- Amey
- Arriva Trains Wales
- Arriva Cross Country
- ASLEF
- Balfour Beatty Rail
- BRB (Residuary) Ltd
- British Transport Police Authority
- Carillon Rail
- Chiltern Railways
- Cotswold Rail
- C2C
- Direct Rail Services
- East Midlands Trains
- English Welsh and Scottish Railway
- Eurostar
- Eurotunnel Plc
- First Capital Connect
- First Engineering
- First Great Western
- Freightliner
- Gatwick Express
- GB Rail freight
- GE Capital
- Grant Rail
- Heathrow Connect
- Heathrow Express
- Hull Trains
- Island Lines

- Jarvis
- London & North Western Railway Company Ltd
- Loco Operating Leasing Partnership
- London and Continental Railways
- Maintrain
- Merseyrail
- Ministry of Defence
- National Archives of England and Wales
- National Archive of Scotland
- Network Rail
- Northern
- One
- Railnews Ltd
- Rail Standards and Safety Board
- RMT
- Rolling stock leasing companies
- Royal Mail
- Riviera Trains
- Scotrail
- Sea Containers
- Serco
- Siemens
- Silverlink trains
- Southern Railways
- Southeastern trains
- Southwest trains
- Stansted Express
- Transpennine Express
- Transport for Scotland
- TSSA
- Venice Simplon Orient Express
- Virgin Trains
- VTG Rail UK Ltd
- W&G Industrial Leasing
- Wabtec
- WAG
- Wessex Trains
- West Coast Railways

Annex C – Consultation Response Form

Part 1 – Information about you	
Name	
Address	
Postcode	
email	
Company Name or Organisation (if applicable)	
Please tick one box from the list below that best describes you/ your company or organisation.	
<input type="checkbox"/>	Small to Medium Enterprise (up to 50 employees)
<input type="checkbox"/>	Large Company
<input type="checkbox"/>	Representative Organisation
<input type="checkbox"/>	Trade Union
<input type="checkbox"/>	Interest Group
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Police
<input type="checkbox"/>	Member of the public
<input type="checkbox"/>	Other (please describe):
If you are responding on behalf of an organisation or interest group how many members do you have and how did you obtain the views of your members:	
If you would like your response or personal details to be treated confidentially please explain why:	

Part 2 – Your Comments

1.

Yes

No

Please explain your reasons and add any additional topics on which you would wish to see further guidance:

2.

Yes

No

Please explain your reasons and add any additional comments you wish to make:

3.

Yes

No

Please explain your reasons and add any additional comments you wish to make:

