



# **The Plan for Rail**

## **A Consultation on Legislation to Implement Rail Transformation: Government Response**

Presented to Parliament  
by the Secretary of State for Transport  
by Command of His Majesty

February 2024



© Crown copyright 2024

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.uk/official-documents](https://www.gov.uk/official-documents).

ISBN 978-1-5286-4338-2

E02943394 02/24

Printed on paper containing 40% recycled fibre content minimum

Printed in the UK by HH Associates Ltd. on behalf of the Controller of His Majesty's Stationery Office

# Contents

Ministerial Foreword	5
1. Introduction	7
2. Consultation Response	16
How we consulted	16
Who responded	16
3. What You Said	17
We Own It campaign	17
Overview	20
Question 1 - The designation of Great British Railways	21
Question 2 - Great British Railways acting in the public interest	27
Question 3 - Devolved Administration Delegation of Contracting Authority	31
Question 4 - Direct Award to a Public Sector Operator in Specified Circumstances	35
Question 5 - Revoking and Replacing Regulation 1370/2007 Retained EU Law	39
Question 6 - Securing Better Use of the Rail Network	43
Question 7 - Technical amendments to The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 to facilitate the transfer of responsibilities from the Secretary of State to Great British Railways	48
Question 8 - A widening of scope of the Office of Rail and Road's duty to promote competition to better reflect public sector funding	53
Questions 9, 10 and 11 - Driving efficiency and innovation by removing barriers to collaboration between Passenger Service Contract Operators	56
Question 12 - Fares and Ticketing: Fair Treatment for Independent Retailers	60
Question 13 - Great British Railways Governance and Accountability	63
Question 14 - Duties in Great British Railways' licence	68
Question 15 - Great British Railways Exemption from Financial Penalty for Breach of Licence	73
Question 16 - Business Planning and Funding	77

Question 17 - Independent Scrutiny and Challenge	82
Question 18 - Statutory power to levy a fee on Great British Railways	86
Question 19 - Transport Focus as Passenger Champion	89
Question 20 - Improving Accessibility on the Railways	92
Question 21 - Expanding the Disabled Persons Transport Advisory Committee's Remit	96
Question 22 - Promoting Open Data	98
Question 23 - Ratification of the Luxembourg Protocol	102
Questions 24 and 25 - Impact Assessments	105

## Ministerial Foreword

In his landmark report, Keith Williams made it plain: the rail industry must restore focus on customers to guarantee its future. And in the wake of the pandemic and changes in travel patterns, an industry already too reliant on the public purse has become financially unsustainable in its current structure. Nothing less than fundamental reform is needed, and that's what we're delivering.

Having spent £31bn to support the industry during the pandemic, this government has demonstrated its unwavering commitment to the railway. This is in addition an extensive electrification programme, billions being spent on the Transpennine Route Upgrade, and now Network North – which will deliver Northern Powerhouse Rail in full and a new station at Bradford. It means that almost 200 years since the first passenger service, we're investing so the railway can thrive for another 200 years. But that investment must be twinned with reform.

That means a modern and financially secure railway: delivering for customers while reducing its burden on taxpayers. A railway nimble enough for the post-pandemic economy, which provides a 7-day service upon which customers can rely. And a railway that taps into the commercial expertise of the private sector while retaining public oversight and accountability.

The Secretary of State's 2023 Bradshaw Address set out the 3 areas of reform. Firstly, we must usher in a customer-focused culture, starting with ticketing. We'll simplify the 55 million fares and give passengers a better deal. We've already sold over one million new flexible season tickets; plan to roll out pay-as-you-go journeys to more stations; and introduced single-leg pricing on parts of the network. We're also making our railway open to all, having completed an accessibility audit of every single station while continuing to invest in the Access for All programme. And our commitment to boost freight will be spearheaded by a dedicated Strategic Freight Unit, which is already up and running.

Secondly, we'll simplify the industry's structure – bringing track and train, as well as revenue and cost, together under Great British Railways. This new guiding mind will co-ordinate the network and the trains that run on it. The railways will finally run as one system for the benefit of customers and taxpayers. That means balancing the needs of operators and infrastructure, as well as applying a whole industry approach to finance decisions.

Finally, we'll remove the shackles on the private sector. We'll set the right commercial conditions through new Passenger Service Contracts while continuing to support open access. This refreshed commercial approach will unleash more private sector innovation and an unrelenting focus on quality and customer service. Barriers to entry will be lowered, but the bar for performance will be raised. Alongside this, we'll open up railway data, so firms can develop new services which entice customers back to the railways. And we'll tap into new streams of income – such as commercial opportunities around land and property near stations.

We see an important role for open access in some areas, with improved connectivity and choice for passengers as key parts of rail reform. Open access operators can offer clear benefits to passengers in the regions that they serve through making use of spare capacity and providing more direct links that may not be offered by other services. We will continue to work with the Office of Rail and Road, Network Rail and wider industry to develop a sustainable position that balances benefits to passengers against fair and reasonable costs to taxpayers.

The full ambition of reform requires legislation, which is why we are grateful for your contributions to this consultation. And in the government's response, I hope you'll notice not just the collaborative spirit in which we want to proceed, but the broad support that already exists across the industry.

And we've made progress. The King's Speech announced a draft Rail Reform Bill, which will now undergo pre-legislative scrutiny. Allowing Parliamentarians and industry experts time to review and test the legislation in draft is right in and of itself. But it also helps ensure swifter passage through Parliament when legislation is brought forward. However, legislation alone has never been the silver bullet for reform. As you will see in the following pages, many aspects of reform can happen without legislation and are already underway, thanks to the work of the Great British Railways Transition Team.

Ultimately, this is about choices. Do we continue to ignore the industry's systemic problems or dismiss them as too difficult to solve? Or do we take long-term decisions in the national interest? This government has made its choice. We're setting out a clear plan to fix our broken railway model, to win passengers back on board, and to set our railways up for long term success. That's what Britain, the original railway nation, deserves.

**The Rt Hon Mark Harper MP, Secretary of State for Transport / Huw Merriman MP,  
Minister of State for Rail**

# 1. Introduction

Reform is essential to address the urgent challenges facing today's railways. Our rail reforms are bringing Britain's railways into the 21st century. They will improve the rail network, with better focus on performance and punctuality, which will benefit customers and communities across the country, as well as the wider economy.

Following the Williams Rail Review, established in September 2018 and led by independent chair Keith Williams, the government published the Williams-Shapps Plan for Rail white paper in May 2021. This white paper set out 62 commitments to modernise the railways through focusing on a modern passenger experience, new opportunities for freight operators, innovators and suppliers, a simpler industry structure with a new guiding mind to integrate track and train, and the creation of a new commercial model replacing the previous franchising approach.

With passengers and freight customers at the heart of transformation, the Plan for Rail proposed the creation of a new body, Great British Railways, as the guiding mind for the industry, bringing together track, train and whole industry finance. The establishment of Great British Railways is the driving force behind a simpler industry structure that is adaptable to changing customer needs, working in close partnership with the private sector, including freight operators, suppliers and innovators, to deliver a more efficient, modern rail system underpinned by easier collaboration and aligned incentives, generating value and savings that will have benefits for passengers and taxpayers.

However, the legislative elements of reform are only one part of wider transformation which is already well under way.

## **Delivering rail reform now**

### **Improving the railways for passengers and freight customers**

As set out in the Plan for Rail we are investing to radically reform and improve passengers' experience of fares, ticketing and retailing on the railways. We have already made progress on fares reforms. New national flexi season tickets are on sale, with over one million sold since launch, alongside the continued roll-out of digital ticketing. We have delivered on our commitment to extend single leg pricing to the rest of the London North Eastern Railway (LNER) network, and have committed to pay-as-you-go in urban areas

across the country, with a further 53 stations receiving contactless pay-as-you-go ticketing in the coming months.

We want to see a more competitive retail market and will work to remove structural barriers to entry, so it is easier to enter the market to sell rail tickets. As modern ticketing and payment methods roll out more widely, we will ensure that all passengers are able to buy a ticket including those who need to use cash or do not have access to smartphones or the internet.

We are making progress in delivering the Plan for Rail's vision to improve accessibility on the railway and transform the experience of disabled passengers and those with additional needs. The Access for All programme was launched in 2006 to improve station accessibility in England, Scotland and Wales. Access for All has delivered step free accessible routes at more than 230 stations and smaller scale access improvements at more than 1500 stations. This is in addition to access improvements delivered by major projects such as Crossrail and HS2 or when the industry installs, replaces or renews station infrastructure. The accessibility audit of all 2,575 railway stations in Great Britain is complete and we are developing a National Rail Accessibility Strategy, to facilitate a step-change across the rail network. More detail on our actions to improve accessibility on the railway is set out under question 20.

Great British Railways will be under a licence duty to promote and help drive rail freight growth recognising the sector's economic and environmental benefits. The Great British Railways Transition Team has established a dedicated Strategic Freight Unit to provide the leadership the industry has called for, working to improve performance and efficiency across the network for rail freight customers. We introduced a long-term rail freight growth target on 20 December 2023 to grow rail freight by at least 75% by 2050 to give confidence to the sector's customers and investors and to strengthen the place of rail freight on the national network.

## **Commercial reform and enhancing the role of the private sector**

We will build a commercially-led railway, with the private sector working in partnership with Great British Railways to attract more customers back to rail.

Contracts put in place in response to COVID-19 helped to maintain critical services, but it is now the right time to work towards a more commercial approach and a return to competition for contracts. In the short term, we are working with the industry to introduce improved commercial incentives in existing National Rail Contracts.

To increase innovation and unlock new revenue streams, we are also developing the new commercial model for passenger services. New Passenger Service Contracts will balance the right performance incentives with simple, commercially driven targets to help reinvigorate the sector, drive innovation, and attract more customers to the railway. We will be engaging the market to test and develop the new approach in due course.

More widely, we are also working to deliver greater access to railway data, encouraging new entrants to the market, expanding commercial opportunities around stations and exploring new opportunities for open access services.

Open access has already successfully opened up markets that government did not identify as demonstrated by the success of operators on the East Coast Mainline. Government has been supportive of some recent applications to operate open access services and will work closely with those organisations as they take their proposals through the existing processes.

### **Structural reform to ensure the railways are fit for the 21st century**

The Great British Railways Transition Team has been mobilised, fulfilling the commitment in the Plan for Rail to start interim arrangements immediately. We have announced that the Great British Railways Headquarters will be in Derby, and Great British Railways Transition Team is now working with Derby City Council to identify the site.

While legislation is needed to transfer contracting powers to Great British Railways, we will look to deliver as many of the benefits of bringing together track and train as possible in advance of legislation, within the current accountability framework.

We are building on existing practice to enhance a culture of cross-industry collaboration and whole system thinking. This will improve the delivery of benefits for passengers and taxpayers ahead of the establishment of Great British Railways.

We've seen examples of where this more collaborative approach can deliver better outcomes. For example, passengers benefitted from the successful implementation of the December 2022 timetable change in the West Midlands region on the West Coast Mainline, which was the largest in over a decade and reflects changing post-pandemic passenger travel patterns. Additionally, they saw reduced disruption when Network Rail and long-distance operators on the East Coast Mainline trialled shifting engineering work from weekends to midweek, which also led to improved resource availability and cost benefits. In the time before Great British Railways is established, we want to embed closer collaboration of this kind. Cross-organisational collaboration (within the current legal framework) will improve how different parts of the industry work together to develop thinking, spot opportunities and address challenges earlier - those involved include Network Rail, Great British Railways Transition Team, the Department for Transport, train operating companies and owning groups, Rail Delivery Group, Office of Road and Rail, and the rail supply chain.

Progress is already being made. Network Rail is improving the coordination of decisions relating to infrastructure and operations to unlock benefits such as more efficient planning of engineering works. The Transition Team has worked across industry, and with the support of the Office of Rail and Road, and published a number of potential simplifications to the complex rules and industry processes within contracts, codes and legislation.

### **Workforce reform**

Workforce reforms are needed to deliver a financially and operationally sustainable rail sector. The government is committed to achieving these reforms and supporting train operating companies in resolving related disputes with the Trade Unions.

With the trade union dispute over pay and reforms concluded at Network Rail, the Maintenance Modernisation programme is now underway. This means that essential improvements to ensure efficiency and resilience can take place, enabling the right people with the necessary skills, delivering the right work, at the right time. Workforce reforms include new individual rostering to suit the 24/7 railway, introducing joint and cooperative working, agreeing a set of mandatory overlapping skills for maintenance staff and introducing new standard contracts (for new employees). Safety is at the heart of Modernising Maintenance programme, which will improve the safety of the railway for the workforce and users. Modern technology, such as on-train high-definition cameras and remotely monitored equipment will reduce the need for people to walk in the dangerous trackside environment as frequently.

The government has also passed the Strikes (Minimum Service Levels) Act, which received Royal Assent in July 2023 and provides the relevant Secretary of State with powers to introduce regulations that set minimum levels of service on a strike day across several sectors, including 'transport services'. This means that, on a strike day, in-scope employers can issue work notices to require some staff to work in order to deliver the relevant minimum service level (set out in the regulations). Last year, the Department for Transport consulted on implementing minimum service levels for passenger rail. The Department published the response to this consultation, and set out the policy position, on 6 November 2023. The Secretary of State laid regulations before Parliament on 7 November 2023. The regulations have been designed to balance the ability of workers to take strike action with the ability of people to make important journeys (including accessing work and vital services) and to mitigate the impact of strikes on the economy. The regulations were approved by Parliament and came into force on 8 December 2023. In-scope employers are now able to use minimum service levels during strikes, should they choose to do so.

-----

The remainder of this document focusses on the legislative proposals that we consulted on to unlock further benefits of reform.

## **The Consultation on Legislation to Implement Rail Transformation**

In June 2022, we published our [consultation on the legislative changes required to deliver rail transformation](#). Given the need to align this response with plans for bringing forward legislation, the response has not been published within 12 weeks of the consultation. We have the opportunity to make progress on establishing Great British Railways by undertaking pre-legislative scrutiny of the draft Rail Reform Bill. This will give Parliamentarians and interested stakeholders the chance to scrutinise the draft bill, meaning once parliamentary time allows for its introduction, it will be able to swiftly pass into statute.

The consultation recognised that many of the commitments set out in the Plan for Rail do not require legislation to implement, but that legislation is required to transfer the contracting powers and complete the process of reform.

We consulted on the primary legislative changes proposed, seeking views on 25 questions. These focused on the creation of Great British Railways, the establishment of the new rail sector structure and delivery of wider industry reforms.

The following chapter explains how we consulted on the legislation and who responded. The final chapter (chapter 3) provides detail on what we heard during the consultation on each of our 25 questions, our response to the points raised, and how we intend to take forward our proposals.

## Next steps

The table below summarises the position reached and reflected on the individual questions posed in this government response.

We are using the outputs of the consultation to prepare draft primary legislation which will be introduced to Parliament when parliamentary time allows. In the meantime, we have secured a slot for pre-legislative scrutiny on the draft Rail Reform Bill, demonstrating the Government's commitment to our railways. This response regularly refers to what will happen in the future (for instance, government will licence Great British Railways), and in doing so means what we will do when legislation is introduced.

As set out above, rail reform is being progressed ahead of legislation. We will deliver many benefits for passengers and freight customers in parallel to developing legislation, as we recognise that action is needed now to ensure the railways are fit for the 21st century.

Question	Summary of government response
Question 1 - The designation of Great British Railways	We will take forward legislation to designate Great British Railways. The government agrees that roles and responsibilities must be clear to enable the new body to succeed as a guiding mind for the railways. We will seek to implement a strong governance framework consisting of appropriate mechanisms through which roles and responsibilities will be clearly defined, with accountability for infrastructure and operational delivery across the whole sector (track and train) unified and residing in a single body.
Question 2 - Great British Railways acting in the public interest	Great British Railways, as a public body, will be required to act in the public interest. Its functions and duties will be defined by both existing and new legislation with further details set out in its licence. Existing legislation will continue to underpin Great British Railways' duties with regard to safety and set out Great British Railways' functions including that of infrastructure manager. New legislation will enable Great British Railways to take on the role of the franchising authority.

Question 3 - Devolved Administration Delegation of Contracting Authority	New legislation will allow Scottish and Welsh ministers to make arrangements for Great British Railways to exercise franchising functions on their behalf through an agency agreement. Legislation will be clear that the devolved administrations will retain ultimate responsibility for the functions delegated to Great British Railways and will not affect the ministers' responsibility for the exercise of their functions.
Question 4 - Direct Award to a Public Sector Operator in Specified Circumstances	The government has considered carefully whether to proceed with this proposal having reviewed the responses to consultation and decided not to. Further detail is under question 4.
Question 5 - Revoking and Replacing EU Regulation 1370/2007	We have taken forward those proposals using the powers in the Retained EU Law (Revocation and Reform) Act (REUL). The Public Service Obligations in Transport Regulations 2023 were laid before Parliament on 16 October 2023 for approval by resolution of each House of Parliament. This revoked and replaced regulation 1370/2007, and includes certain drafting and policy changes to ensure we have the flexibilities we need to obtain value for money for taxpayers, in particular reinstatement of direct award powers which expired on 25 December 2023.
Question 6 - Securing Better Use of the Rail Network	To address respondents' concerns regarding the proposed statutory duty on the Office of Rail and Road to facilitate the furtherance of Great British Railways' policies on matters of access to and use of the railway, we have revised the wording of this proposed duty. The government intends to introduce legislation giving the Office of Rail and Road a new duty that will require it to have regard to any policy statement on access to and use of the railway approved by the Secretary of State and published by the Integrated Rail Body (namely, Great British Railways).
Question 7 - Technical amendments to The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 to facilitate the transfer of responsibilities from the Department for Transport to Great British Railways	Following consultation and discussions with industry, we are minded to make 2 immediate technical amendments to the Access and Management Regulations: in regulations 14(9) and 19(4) to facilitate Great British Railways being able to act as the integrated infrastructure manager; and in regulation 16 and Schedule 3 to enable Great British Railways' management of existing contracts.
Question 8 - A widening of scope of the Office of Rail and Road's duty to promote	We will take forward the proposed amendment to the Office of Rail and Road's competition duty to better reflect public sector funding, and in response to the consultation our

competition to better reflect public sector funding	proposed amendment is now limited to passenger service operators and so will not apply to decisions on access applications from rail freight operators.
Questions 9, 10 and 11 - Driving efficiency and innovation by removing barriers to collaboration between Passenger Service Contract Operators	We consulted on a proposal to include in legislation a power for Great British Railways to issue directions to its contracted operators to collaborate with one another. Following concerns raised within the responses we carried out further work, the findings of which led us to believe that inclusion of the required legislative carve-out would not achieve the desired outcome and consequently this proposal will not be taken forward.
Question 12 - Fares and Ticketing: Fair Treatment for Independent Retailers	We want to see a more competitive retail market and will work to remove structural barriers to entry, so it is easier to enter the market to sell rail tickets. Our intention is that Great British Railways' governance framework will be structured to ensure that Great British Railways acts fairly when overseeing the specification of the customer offer and managing decision-making about retail strategy. This, together with existing competition law, enforced by the Office of Rail and Road and the Competition and Markets Authority, will help ensure a high degree of legal protection for independent retailers.
Question 13 - Great British Railways Governance and Accountability	<p>The Secretary of State, as the shareholder and funder of Great British Railways, will have the ultimate responsibility of holding Great British Railways to account through the governance mechanisms set out in question 13.</p> <p>It is our intention that the Secretary of State will set the long-term priorities and funding envelope for the railway, as the Secretary of State is democratically accountable to Parliament. Great British Railways will develop and implement the operational strategy, set the central objectives and standards and coordinate planning, network and operation of the railways across both track and train. Great British Railways, as franchising authority, will also be responsible for the specification, procurement and in-life management of the contracted train services, in place of the Secretary of State.</p>
Question 14 - Duties in Great British Railways' licence	We confirm our intention to pursue the stated approach regarding the Great British Railways licence. We intend the Secretary of State to be required by legislation to consult upon and publish the Great British Railways licence, which will include the new Great British Railways duties. The legislation will require the licence to include specific duties in relation to accessibility, freight and the environment.

<p>Question 15 - Great British Railways Exemption from Financial Penalty for Breach of Licence</p>	<p>We maintain the position that the Office of Rail and Road's ability to levy a financial penalty (if Great British Railways has breached or is breaching a condition of its licence) is not instrumental to the regulator's ability to effectively hold Great British Railways to account, especially when combined with the powers held by the Secretary of State that will re-enforce those of the regulator.</p> <p>However, given the importance of the Office of Rail and Road having a robust regulatory toolkit, we are not minded to change the current policy. We will keep this decision under review as the legislation is finalised.</p>
<p>Question 16 - Business Planning and Funding</p>	<p>We intend to legislate to require Great British Railways to prepare and publish a business plan which sets out how it will deliver its functions. The Office of Rail and Road will hold an important role in monitoring delivery, and assuring changes, of the integrated business plan. We expect the details of the Office of Rail and Road's role to be set out in non-legislative instruments and governance arrangements, such as a memorandum of understanding (MoU) between relevant parties.</p> <p>In response to a point raised by the Office of Rail and Road, it is our intention to take forward in legislation the proposal to clarify existing provisions and expressly allow the Office of Rail and Road to be able to set different dates for each of the funders for the provision of their High-Level Output Specifications and the Statements of Funds Available.</p>
<p>Question 17 - Independent Scrutiny and Challenge</p>	<p>We agree that the Office of Rail and Road must remain independent. It will continue to hold the roles and functions that it holds today, which are underpinned by legislation. The Office of Rail and Road will continue to hold a robust suite of powers in accordance with legislation, which will continue to provide a strong reputational and managerial incentive for Great British Railways to perform effectively. Our intention is to legislate to further strengthen the Office of Rail and Road's ability to approve, establish or administer an ombudsman scheme and, where necessary, provide funding to the operator of such a scheme.</p>
<p>Question 18 - Statutory power to levy a fee on Great British Railways</p>	<p>We will legislate so that the Office of Rail and Road can raise fees from Great British Railways for economic regulation.</p>
<p>Question 19 - Transport Focus as Passenger Champion</p>	<p>As proposed, we will amend section 76 of the Railways Act 1993 to ensure that the duty for Transport Focus to investigate will apply to all matters that affect passenger experience, and to enable them to make representations to</p>

	the organisations providing services to passengers in the future, including Great British Railways.
Question 20 - Improving Accessibility on the Railways	In this response, we are confirming that we intend to use a suite of approaches to embed accessibility as part of Great British Railways' role.
Question 21 - Expanding the Disabled Persons Transport Advisory Committee's Remit	As proposed, we will expand the Disabled Persons Transport Advisory Committee's remit to become a statutory adviser to Great British Railways, as well as to the Secretary of State, on matters relating to disability and transport.
Question 22 - Promoting Open Data	<p>We will take forward the legislative proposal to enable Great British Railways to make information disclosures, including distributing open data, in line with its functions and activities. Any disclosures will remain subject to other laws, for example personal data will be subject to UK General Data Protection Regulation (GDPR).</p> <p>We will seek to introduce appropriate safeguards and protections for information confidentiality such as through legislation, contract, the licence, or guidance to ensure that commercial sensitivity is properly considered before data is shared or published</p>
Question 23 - Ratification of the Luxembourg Protocol	We will take forward the proposal for a new power in primary legislation which will enable the government to lay regulations to implement the terms of the Protocol at a later date. The consultation made clear that the government will consult on the implementation of the Protocol in detail prior to any implementation.
Questions 24 and 25 - Impact Assessments	The evidence received across the consultation has informed work by the department to update the impact assessments, which will be published in due course.

## 2. Consultation Response

This section explains how we consulted on the legislation required to implement rail transformation, which we will introduce when parliamentary time allows, and who responded.

### How we consulted

The public consultation ran for 8 weeks, from 9 June 2022 to 4 August 2022. It comprised:

- a digital survey to capture stakeholder responses
- the option to submit responses via email and post
- a series of department-led roundtables with key stakeholders and themed 'deep dives' to discuss consultation proposals
- letters and phone calls to key stakeholders on the day of consultation launch
- a rail reform day event on 5 July 2022 to discuss next steps for rail reform
- a parliamentary drop-in session in the House of Lords
- official level engagement across Department for Transport, the Great British Railways Transition Team and the rail sector

We would like to thank all who took part in the consultation for your time and for your views.

### Who responded

We received nearly 2,500 responses overall. Over 2,300 responses were submitted via the online consultation form, with the remaining responses submitted via email to the dedicated consultation inbox. The significant majority of the responses to the online consultation form were submitted by individuals, whilst most of the responses to the consultation inbox were submitted by organisations. Both qualitative and quantitative analysis was conducted to review the responses.

## 3. What You Said

In total, we received nearly 2,500 responses to the consultation. A large proportion of the individual responses we received were closely aligned to the We Own It campaign - more information about this campaign, and our response, can be found in the section below. Across the many other responses we received from individuals, industry and other organisations there is broad general support for the proposed primary legislative changes set out in the consultation, including for:

- the proposed role of Great British Railways
- the factors Great British Railways must consider
- the delegation of authority by Scottish and Welsh ministers
- the proposed revoking and replacing of regulation 1370/2007
- primary legislation requiring the Great British Railways licence to include specific duties in relation to accessibility, freight and the environment
- the proposal to give the Office of Rail and Road a statutory power to levy a fee on Great British Railways
- Transport Focus being able to effectively undertake the role of independent passenger champion
- the proposal to expand Disabled Persons Transport Advisory Committee's remit to become a statutory advisor to Great British Railways and the Secretary of State
- including a power in primary legislation to enable the ratification of the Luxembourg Rail Protocol

Some concerns, however, were outlined by respondents. Namely, around the scrutiny, challenge, governance and oversight of Great British Railways, and the role of the Office of Rail and Road. We seek to address these concerns throughout this chapter.

## We Own It campaign

### Context

On 1 August 2022, the We Own It campaign group asked its supporters to respond to the consultation. We Own It is an independent organisation which campaigns against privatisation and for 21st century public ownership of public services. It provided a template response to the consultation.

We Own It campaign respondents are opposed to, disagree with or are otherwise negative towards many aspects of the Plan for Rail. They represent a large proportion of all responses to the consultation. While it is not possible to know exactly how many responses were influenced by the campaign, 60% of responses to the consultation used the campaign template and some individual responses included similar views on nationalisation.

Due to the high number of responses which were wholly, or significantly, based on the We Own It template response, and the fact that several of those issues such as nationalisation touch on many of the topics and questions considered throughout the consultation, we are responding to the campaign's key themes here. This means that when we are referring to respondents in the main body of the response, we are not referring to responses that were wholly or significantly based on the We Own It template.

## What they told us

The We Own It campaign respondents explained why they advocate public ownership of the railways. Respondents' arguments for nationalisation included:

- the management and secure delivery of a high quality, reliable service which is accountable to the public can only be achieved through nationalisation
- nationalisation is the only way to avoid fragmentation and the perverse incentives caused by competition, which continues to hold back the integration of ticketing, data, timetabling, and many other areas
- profits are being sent to foreign owned firms and not into the public purse

Alongside nationalisation, We Own It campaign respondents shared views on other topics. These included:

- the cost of rail travel
- the closure of ticket offices
- the accessibility of online booking systems to all passengers
- the importance of disabled people being able to turn up and travel without pre-booking assistance
- climate action

Respondents also said that, if the railways are not nationalised, train operating companies contracted by Great British Railways should at a minimum be treated as public bodies, making them subject to the Freedom of Information Act and Public Sector Equality Duty.

## Our response

### Nationalisation

The Williams Rail Review considered other models, including nationalisation, and published its findings. This consultation is about the legislative measures needed to deliver the Plan for Rail and was not designed to repeat that consideration. However, given the

number of responses on this issue, we have provided a summary below, and further detail can be found in the Williams Rail Review and the Plan for Rail.

The Williams Rail Review found that the sector today is too complicated and that simplification and reduction in the complexity is what needs to change rather than ownership of the railways. The vision set out in the Plan for Rail, that these reforms put in place, is designed to deliver that simplification.

More recently, the Secretary of State set out within his George Bradshaw address on 7 February 2023, that this government does not believe that nationalisation will solve the challenges facing the railways today. The industry has long called for a guiding mind to coordinate the network - Great British Railways will therefore be responsible for track and train, as well as revenue and cost. This means finally treating the railways as the whole system it should be rather than a web of disparate interests that it has become.

Our model also recognises the critical role of the private sector in delivering growth and efficiency in rail. The private sector has always played an important role in the railways and the Secretary of State has set out the government's ambition to enhance the role of the private sector. Through a pragmatic partnership with Great British Railways, the private sector can help to reinvigorate the rail sector, drive innovation and most importantly, attract more customers to the railway. Great British Railways will deliver many of the perceived benefits of nationalisation without losing the efficiency and innovation advantages that the private sector can bring.

## **Other topics**

Some respondents raised a number of wider related themes broadly related to the railways and the industry. These themes fell beyond the scope of the issues consulted on and are not addressed in detail in this response.

## Overview

In the following sections, we summarise the responses to the consultation focused on the legislation required to implement rail transformation. We address each consultation question in turn, repeating the structure of:

- proposals
- what you told us
- our response

## Question 1 - The designation of Great British Railways

### Proposals

In the consultation we proposed that the Secretary of State will have a power set in legislation to designate a new integrated rail body, namely Great British Railways, to be a guiding mind for the railways across Great Britain responsible for running the railways safely and efficiently to maximise social and economic value.

We said that Great British Railways will be a new organisation, with a new culture and mindset from the very beginning, drawing in a greater diversity of skills and experience from the sector and beyond. Great British Railways will be centred around creating the right environment for the private sector to innovate and drive improvements across the railway, ensuring we deliver the best possible service for the passenger and freight customer.

The consultation explained that Network Rail Infrastructure Limited will be used as the corporate entity that will become the main operating company of Great British Railways to avoid highly complex transfers in implementation that would unnecessarily prolong the transformation. The Secretary of State will appoint new leadership that will have a new remit and incentives. Great British Railways will need to have a strong, capable board with the right mix of experience and discipline to set a new and distinct customer-focused culture. As the integrated rail body, Great British Railways will be required to fulfil a range of functions and duties, which will be set out in the Great British Railways licence.

We set out Great British Railways' core functions, which will be: to plan and manage access to, and ensure safe and effective use of, the Great British Railways network; to manage Great British Railways infrastructure; to manage and secure delivery of high-quality, reliable passenger services; and to be accountable for the customer offer.

### We asked:

**Does the scope of the proposed designation of Great British Railways as an integrated rail body appropriately capture what you would expect for an effective guiding mind for the railways? Please explain.**

### What you told us

Respondents supported the proposed scope of the designation of Great British Railways, and agreed with the guiding mind proposition, stressing the importance of clearly setting out the new arm's length body's roles and responsibilities to avoid the fragmentation and unclear accountabilities currently experienced in the rail sector.

However, some respondents indicated that they preferred all of the roles, responsibilities and core functions for Great British Railways to be set out in statute rather than the licence, as this would provide reassurance to stakeholders as legislation is less likely to change over time. Other respondents were concerned that if only the core functions mentioned in the consultation (and summarised in the "proposals" section above) were

transcribed in the legislation, it could hard-wire prioritisation of those functions over other important considerations such as freight.

Our proposal is that Great British Railways' functions will derive from both legislation and the licence. The functions of infrastructure management and franchising continue to derive from existing legislation. It is our intention that the Railways Act 1993 will be amended to transfer powers to Great British Railways to enable it to function as both the infrastructure manager and the franchising authority. Given the importance of freight, and the range of factors that Great British Railways will have to consider, it is absolutely not our intention to create new primary legislation that prioritises passengers over freight. The success of rail freight is a major priority for government and our country. Beyond the legislation, our response to question 14 sets out that there will be licence conditions designed to promote the growth of freight, recognising its importance.

### **Additional proposed functions**

Some respondents proposed that additional functions were needed, without always specifying whether they thought they should be included in the licence or in legislation.

A number of respondents from the rail industry were concerned about the potential adverse effect on non-Great British Railways operators (open access operators and freight operating companies) of bringing management of infrastructure and passenger services under one roof. They proposed that another core function should be specified for Great British Railways to encourage and ensure fair access and prevent discrimination.

Some respondents indicated that Great British Railways should take into consideration the impact of its decisions on other parties (including other networks, infrastructure managers and freight operators), highlighting the need for adequate protections to be in place to ensure that non-Great British Railways operators are not excluded from the market and for cooperation to enable the smooth running of rail services across networks and borders.

Some respondents felt that support of the delivery of rail freight services should be specifically mentioned in the core functions for Great British Railways in order for it to be a fully integrated body.

Other respondents wanted clarity on whether any aspects of the procurement, cascading and funding of rolling stock would change in future.

### **Relationship between Great British Railways and other bodies**

Of those that responded to this question, many responded positively towards the proposed approach. Respondents stressed the importance of ensuring that the responsibilities of each of the parties were well-defined in the new structure, particularly those of the Department for Transport, Great British Railways, and devolved rail authorities, emphasising the need for clear accountabilities. They believed the Secretary of State should set the overall policy and objectives in England & Wales for the operationally independent Great British Railways to deliver in collaboration with the private sector.

Respondents agreed that Great British Railways should have day-to-day autonomy and independence from central government in operational decision-making and the setting of a long-term strategy to enable Great British Railways to fulfil its role as a guiding mind although some respondents wanted that independence to extend to funding decisions, without being clear on whether this was limited to infrastructure or franchising funding decisions.

There were differing views about who should be responsible for setting Great British Railways' strategic objectives: some felt that a Secretary of State-led strategy could undermine Great British Railways' role, while others agreed that the Secretary of State should set long-term priorities, provided the right balance were struck between the Secretary of State and Great British Railways to ensure effective delivery.

There were also some concerns that the proposed framework will be a reorganised version of the current system carrying what some respondents felt were weaknesses. These included concerns about the risk of fragmentation within the rail sector, whether the right organisation will have responsibility for franchising services and lack of clarity around the extent to which Great British Railways or government will have responsibility for long term rail strategy.

Some respondents expressed concerns that, through the range of the proposed powers, the governance framework would give the Department for Transport exclusive control over Great British Railways, limiting the new body's ability to make strategic decisions and react to change. They argued that could affect its ability to collaborate with other parties (for example train operators) and risk leaving no room for other bodies such as local transport authorities to have an influential role.

There were concerns raised about Network Rail Infrastructure Limited being the corporate entity that will become the main operating company of Great British Railways. Respondents felt any transfers of workforce should be carefully managed to ensure Great British Railways has the right skills, capability, culture, and behaviours to deliver on its remit so that it did not become simply a larger version of Network Rail.

## Our response

### The scope of an integrated rail body

The government agrees that roles and responsibilities must be clear to enable the new body to succeed as guiding mind for the railways. The response sets out how we will seek to implement a strong governance framework consisting of appropriate mechanisms where roles and responsibilities will be clearly defined, with accountability for infrastructure and operational delivery across the whole sector (track and train) unified and residing in a single body.

Great British Railways' functions will derive from both legislation and its licence. The functions of infrastructure management and franchising will continue to derive from existing legislation. It is our intention that legislation will be amended to transfer powers to Great British Railways to enable it to function as both the infrastructure manager and the

franchising authority. It is absolutely not our intention to create new primary legislation that prioritises functions relating to passengers over functions relating to freight.

Additional duties will be set out in the Great British Railways licence as detailed in the response to question 14, taking into account the obligation to act in the public interest as set out in the response to question 2. The licence has a statutory basis and will be monitored and enforced by the Office of Rail and Road. Great British Railways' licence would focus on enduring duties, functions and behaviours and we intend to carry out a public consultation on this.

### **Additional proposed functions**

Regarding fair access, the government recognises that a simple and efficient access framework underpinned by legislation that ensures fair, transparent, and non-discriminatory allocation of capacity is vital to a competitive and well-functioning railway. The requirement for Great British Railways to consider its impact on other parties in its decision-making process ensuring non-Great British Railways operators are not excluded from the market, and the role of the Office of Rail and Road in this, is addressed in question 6.

Subject to the passage of legislation, Great British Railways will be licenced to operate a railway network that secures benefits for current and future rail passengers and freight customers. Great British Railways will need to collaborate with other infrastructure managers to secure the uninterrupted running of services.

The government recognises the significant importance of rail freight and strongly supports its growth. See question 14 for our proposals about how freight will be included within the Great British Railways licence. The Plan for Rail also proposed to include a Strategic Freight Unit within Great British Railways dedicated to improving performance and efficiency across the network for rail freight customers, which has already been established. We have set a long-term rail freight growth target to grow rail freight by at least 75% by 2050, which seeks to help drive rail freight growth, recognising the sector's vast economic and environmental benefits.

The government recognises that rolling stock is an important part of the delivery of passenger services. Great British Railways will set out the approach it will take on rolling stock through the business planning process.

### **Relationship between Great British Railways and other bodies**

The industry's fragmentation was identified as the root cause of many of the weaknesses in the Plan for Rail. Creating a single body accountable for the whole sector, and putting in place strong governance and adequate controls, will fundamentally change the structure such that inefficiencies and weaknesses can be more easily addressed.

We welcome the support for our proposal to create an independent guiding mind through the establishment of Great British Railways. We will require Great British Railways to undertake integrated business planning to support this. Legislation would require Great British Railways to produce and update 5-year integrated business plans, which will plan

and prioritise activities across track and train. Plans will also consider the needs of the railway user, which, when combined with the statutory requirement, will enable Great British Railways to act as a 'guiding mind'. Great British Railways will have day-to-day operational control for the railway. Our intended approach to Great British Railways' business planning and funding is set out in the answer to question 16.

The Secretary of State is democratically accountable to Parliament and will be sole shareholder for Great British Railways. Therefore, as long as the railway is subsidised by taxpayers, the government's view is that the Secretary of State should have a role in setting the long-term priorities and funding envelope for the railway. This should not undermine Great British Railways' role as the guiding mind. Working closely with the department, Great British Railways will develop and implement a Long Term Strategy for Rail based on the Secretary of State's long-term priorities for the railways. The Great British Railways Transition Team, working closely with stakeholders, continues to develop work around the first version of that Strategy. Clear lines of accountability between the Secretary of State and Great British Railways will be underpinned by a strong governance framework.

Our intention is that the Secretary of State will set the strategic priorities and vision for rail through long-term planning, the business planning process as well as via other mechanisms such as directions and guidance. Great British Railways will develop and implement the operational strategy, set the central objectives and standards and coordinate planning, network and operation of the railways across both track and train. Great British Railways, as franchising authority, will also be responsible for the specification, procurement and in-life management of the contracted train services, in place of the Secretary of State. When designing the Great British Railways governance regime, the department will consider ways of ensuring that Great British Railways collaborates effectively with key stakeholders, including local authorities, key customers and Great British Railways' contractual parties, when working to implement its operational strategy.

The Secretary of State, as the sole shareholder of Great British Railways, will have the ultimate responsibility for holding Great British Railways to account. As shareholder, the Secretary of State will have a role in setting the high-level objectives for Great British Railways and will be able to request information on how Great British Railways is performing against them. The Secretary of State will ensure that Great British Railways is acting as an effective steward of public money and will also have a role in ensuring that the Great British Railways chair and board have the right skills and capabilities (including involvement in appointments to the Great British Railways' Board and holding the chair to account for Great British Railways' delivery). The Secretary of State will issue Great British Railways' licence. The Office of Rail and Road will provide independent whole-industry oversight and transparently hold Great British Railways to account against the licence. It will also continue to hold other industry licensees to account against the obligations of their licences. Transport Focus will act as an advisor and expert, representing the interests of passengers in holding the rail industry to account. Great British Railways will also be responsible for transparently monitoring its own performance and self-reporting any issues.

Our intention is for Great British Railways to operate under a licence issued by the Secretary of State and enforced by the Office of Rail and Road that both the Secretary of State and the Office of Rail and Road will have the power to amend with a 28-day statutory

consultation. The Office of Rail and Road will only be able to amend the licence with Great British Railways' consent. The licence will set out the conditions with which Great British Railways must comply when undertaking its role. The licence will be consulted on, allowing other parties and the public to comment and influence the approach. Great British Railways will have the tools and incentives through the business plan to set out the best approach to deliver for the passenger and the freight customer. Directions and guidance will have a complementary role, allowing the Secretary of State to instruct and advise Great British Railways if required, ensuring it responds appropriately to circumstances and delivers on the right priorities.

We are looking at how we can build on existing work to support collaboration in the industry in future models. We have responded to concerns about how local and regional transport authorities' views would be taken into account in question 2.

We are keen to ensure that Great British Railways is able to deliver reform of the industry as quickly as possible. To support this, we have established the Great British Railways Transition Team, an organisation which has been planning for Great British Railways' future. The Transition Team has been drawing in capability from across the rail industry as well as outside it and has grown its strategic capability to support reform. The Great British Railways Transition Team is also acting as a driving force for culture change in the industry, helping over time to build the capacity and capability of the first board of Great British Railways and supporting a clear customer-focused ethos so it can establish its own identity, separate from that of Network Rail.

To avoid a complex transfer of assets and staff, it is our intention that Great British Railways will be formed from Network Rail's corporate structure. We are doing this for pragmatic reasons only. We are determined that Great British Railways will be a new entity with a new approach, and new accountability mechanisms that will underpin the new body. New leadership will be recruited and Great British Railways will develop a distinct identity and a more customer-focused culture by bringing in skills and talent from across the industry and beyond.

Secretary of State will appoint the chair and it is also our expectation that the Secretary of State will have a formal consultative role in non-executive appointments to Great British Railways' Board to ensure that it has the right leadership to set a different culture. See question 13 for more detail on Corporate Governance.

## Question 2 - Great British Railways acting in the public interest

### Proposals

In the consultation we set out that Great British Railways will have an overarching duty to perform its functions, and act in the public interest, in a way that balances a range of factors to be set out in Great British Railways' licence. We set out that this would include a duty to act in a manner that it considers maximises the social and economic value (as defined by the Secretary of State) from the use of the network. In addition, we said these factors were likely to include:

- benefits for current and future rail passengers;
- benefits from promoting the carriage and growth of rail freight;
- benefits from improving accessibility;
- benefits for communities, regions, the economy and the supply chain;
- impacts on the environment;
- benefits from promoting efficiency, affordability and value for passengers, taxpayers and rail funders.

**We asked if there are any other factors Great British Railways should balance and consider as part of its overarching public interest duty, and invited you to provide an explanation for your view.**

### What you told us

#### Defining the public interest duty – social and economic value

Respondents agreed with the idea that Great British Railways should act in the public interest. Respondents were broadly in support of the proposed factors to consider that were listed above. Some respondents noted that additional detail about the proposed factors was needed to better clarify the intended benefits. It was also suggested that prioritisation be applied when Great British Railways is considering these factors.

Some respondents found that the definition of acting in the public interest and the related duties and factors were too vaguely described. They suggested that the Secretary of State should consult public and private bodies to clarify the definition of social and economic value. There were also views that in maximising the social and economic value, Great British Railways should also be required to maximise environmental value.

#### Other factors to consider

A few respondents were keen to see Great British Railways develop a coherent multi-modal transport system as a way to encourage integrated travel, reduce barriers for passengers and support the wider environmental objectives and felt this should be added to the factors for consideration by Great British Railways. It was raised that Great British Railways decisions should not negatively affect airport passengers.

Some respondents thought that Great British Railways should be required to have greater consideration of passengers with various accessibility needs.

Some respondents thought Great British Railways should also be required to consider factors relating to the private sector, such as ensuring the resilience, capability, and productivity of the supply chain. Increasing rail usage was also seen as a way to boost the economy and promote private sector investment.

Some respondents proposed that Great British Railways should be required to act transparently. A few respondents suggested that transparency should be an explicit requirement for Great British Railways' integrated decision-making. Some respondents indicated that Great British Railways should consider the impact of its decisions on other parties (including other networks, infrastructure managers and freight operators), highlighting the need for adequate protections to be in place to ensure non-Great British Railways operators are not excluded from the market.

### **Interaction of Great British Railways with regional transport authorities**

Some respondents asked for more clarity about how Great British Railways will interact with local or regional transport authorities, suggesting a statutory requirement for Great British Railways to consult with sub-national transport bodies and local authorities on infrastructure and passenger services matters, taking account of local transport strategies.

### **Our response**

We welcome the interest in articulating the various factors that Great British Railways will need to consider. Great British Railways, as a public body, will be required to act in the public interest. We intend that Great British Railways' functions and duties will be defined by both existing and new legislation with further details being set out in its licence. Existing legislation will continue to underpin Great British Railways' duties with regard to safety and will set out Great British Railways' functions including that of infrastructure manager. New legislation will enable Great British Railways to take on the role of the franchising authority. The Great British Railways licence will include additional functions and duties required for it to fulfil its role. We intend Great British Railways' duty to act in the public interest to be defined in a number of ways, explained in greater detail below.

### **Defining the public interest duty – social and economic value**

The main operating company of Great British Railways will be a non-departmental public body and will be obliged to act in the public interest. It must comply with the principles of Managing Public Money, the Public Sector Equality Duty and the Human Rights Act 1998. It will also have to comply with health and safety legislation. This public body will have to act lawfully and rationally with its actions subject to scrutiny by public law challenges in the courts. We do not propose an additional legislative duty on the body to act in the public interest.

The government notes that the duty for Great British Railways to maximise social and economic value will need further clarification. We intend that the legislation will be framed to require the Secretary of State to draft Great British Railways' licence such that it must

include a condition to maximise the social and economic benefit from the operation of the railway across Great Britain, and for Great British Railways to be required to fulfil this condition to the extent it is practicable within the resources available.

The government will need to ensure that the duty on the Secretary of State is met in the drafting of a detailed licence condition. The Secretary of State will consult on the draft licence before the licence is issued.

Some respondents asked that environmental value be included as part of the social and economic value. It is our intention that the Secretary of State will be required by legislation to include a licence condition on Great British Railways to have regard to the environment when it exercises its functions. This is discussed in more detail in the response to question 14.

### **Other factors to consider**

We have noted the additional factors suggested for Great British Railways to take into account when acting in the public interest. We will consider these during the development of the proposed Great British Railways licence and of other governance mechanisms and as set out below.

As regards the suggestion that Great British Railways should be responsible for a coherent multi-modal transport system, this would require significant changes to legislation that are outside the scope of this consultation. The consultation is focused on the legislation required for the delivery of an integrated infrastructure manager and franchising authority. However, we will consider how far Great British Railways should be obliged in future to consider how it could encourage integrated travel as we develop the Great British Railways licence obligations. This could be realised through its collaboration with other transport service providers and by exploiting technology to improve online services and integrate ticketing to provide a great end-to-end journey offer for passengers.

Because we recognise the importance of driving change, we intend that the Secretary of State will be required by legislation to include a licence condition on Great British Railways to consider the needs of disabled persons when it exercises its functions. Questions 20 and 21 also set out the government's approach to accessibility.

With regard to factors relating to the growth of the private sector, the government supports a diverse, thriving and competitive private sector supply chain that can meet the needs of customers and taxpayers. Great British Railways will be tasked to support this through its thirty-year strategy to give confidence to industry and investors and by restoring a regular rolling programme of competitions for Passenger Service Contracts. Another key driver of private sector growth is the important relationship with the supply chain. The resilience, capability and productivity of the supply chain will be shaped by the approach Great British Railways and its operators take to procurement and the visibility of future opportunities to bid for work.

We agree that Great British Railways should be expected to act transparently, but we do not agree that this requires additional legislation. As a public body, Great British Railways will be expected to act and make decisions in a transparent manner. There are specific requirements about transparency on access decisions that are detailed in question 16. It

would be more appropriate to include requirements to act transparently in specific situations in Great British Railways' licence than in legislation. It would then be subject to oversight and enforcement by the Office of Rail and Road. The requirement for Great British Railways to consider its impact on other parties, including freight, in its decision-making process and ensuring non-Great British Railways operators are able to plan and develop their businesses and are not excluded from the market is addressed in question 6.

### **Interaction between Great British Railways and regional transport authorities**

Great British Railways will give local leaders a greater say through partnership agreements that will provide opportunities for greater influence over things like local ticketing, services and stations. These partnerships do not require primary legislation, other than the legislation required to set up Great British Railways. The department has commissioned the Great British Railways Transition Team to develop an approach to partnerships and local engagement, and discussions with local and combined authority stakeholders are underway. This includes rail partnerships between Great British Railways and Level 3 and Level 4 devolved mayoral institutions, and the implementation of the Trailblazing Deeper Devolution Deals to realise multi-modal transport integration in Greater Manchester and the West Midlands. These trailblazer deals will equip authorities with deeper and additional policy levers to deliver on their priorities. The trailblazers will provide a blueprint for other areas to follow. The partnerships model is at an early stage of development and decisions on how partnerships will be assessed are still under consideration.

## Question 3 - Devolved Administration Delegation of Contracting Authority

### Proposals

To support closer collaboration with Great British Railways, in the consultation we proposed a power to enable Scottish and/or Welsh ministers to delegate their contracting authority for devolved passenger services to Great British Railways, subject to the terms of delegation being mutually acceptable to ministers in the devolved administration(s) and the Secretary of State. This proposal would not require such delegation but would enable it to happen in the future should Scottish and/or Welsh ministers decide to pursue it.

In the consultation we set out that the powers, roles and responsibilities of the Scottish and Welsh Governments will not be diminished and they will continue to exercise their current powers and be democratically accountable for them.

**We therefore asked:**

**Do you support the proposal to include a power in primary legislation to enable Scottish and Welsh ministers to delegate their contracting authority to Great British Railways, subject to the terms of delegation being mutually acceptable to ministers in the devolved administration(s) and the Secretary of State? We invited you to provide an explanation for your view.**

### What you told us

The majority of those who responded to this question were supportive of this proposal with some respondents agreeing in particular that the proposal provided greater flexibility for the future and noting the benefits an integrated railway could provide such as more coordinated decision-making and strategic planning.

The views and considerations of those operating within the devolved administrations are of particular importance. Transport for Wales responded that the option to allow for the Welsh Government to utilise Great British Railways services was sensible to avoid legislative prevention of such arrangements should this be something the Welsh Government wished to pursue. They also proposed that the power to delegate should be mutual to allow the Welsh Government (including through its agent Transport for Wales) to similarly provide such services to Great British Railways where this may offer, for example, better value for money or customer benefits. Transport Scotland did not provide a response to the consultation.

The previous Rail Minister, Wendy Morton, wrote to Scottish and Welsh ministers separately, welcoming their thoughts on the proposals set out across the consultation. The Secretary of State and the Rail Minister have continued discussions with Welsh and Scottish ministers. The Welsh Government provided helpful challenge on devolution across all aspects of rail transformation. For this specific proposal, whilst the Welsh Government expressed a similar position to Transport for Wales, they made clear the need to set out the roles and responsibilities of each party including appropriate governance controls before they could consider using such powers. Scottish ministers did not respond.

Across all the responses received, there were a number of common themes.

### **Benefits of integration**

Some of those who agreed with this proposal did so citing the benefits a more integrated railway could bring including greater strategic planning across infrastructure and passenger services and more coordinated decision-making. Further integration may also enable organisations to make better use of shared resources and expertise. Advocates of greater integration felt this proposal provided appropriate flexibility should the devolved nations wish to pursue further integration at any point in the future.

### **What this means for the existing devolution settlements and the role of the public sector and requests for more detail**

Many of those who disagreed with this proposal were individuals rather than organisations and did so on the grounds that they believed this would take power away from the devolved administrations and bind them to choices made by previous administrations or the Secretary of State. Respondents emphasised that delegation should not be compulsory or diminish the devolution settlements for Scotland or Wales. Respondents also set out that it would be important that the devolved administrations would be able to revoke any delegation they entered.

Some respondents, many of whom also believed this proposal would take power away from the devolved administrations, were concerned that an agreement to delegate would limit the devolved administrations' ability to 'renationalise' its railways or increase the role of the public sector. Many also highlighted the political differences between the devolved administrations and the UK Government.

Some respondents commented that the proposal was too high-level and open ended and did not provide enough detail on how any delegation would work in practice.

### **What this means for other devolved rail bodies**

Some respondents questioned why this proposal only extended to Scotland and Wales and did not include devolved rail authorities within England too.

## **Our response**

### **Benefits of integration**

We are pleased to see that many respondents not only agree with this proposal but also recognise the benefits a more integrated railway can bring. An important commitment of the Plan for Rail was to strengthen devolved railways through closer collaboration with Great British Railways, improving services, consistency and coordination across the country. The Great British Railways Transition Team has already begun to establish important working relationships with devolved rail bodies including Transport for Wales and Transport Scotland and through its organisational design work will provide clarity to

industry and stakeholders on its role and responsibilities and where accountabilities sit across the network.

To complement the commitment within the Plan for Rail and the ongoing work of Great British Railways Transition Team, it is important that our proposals for legislation do not prevent opportunities to deepen integration where this is mutually beneficial.

### **What this would mean for existing devolution settlements and requests for more detail**

The government has been clear that the devolved administrations will continue to exercise their current powers, be responsible for existing roles and responsibilities and to be democratically accountable for them. This proposal does not alter that but provides the devolved administrations with additional flexibility they do not currently have.

New legislation would allow Scottish and Welsh ministers to make arrangements for Great British Railways to exercise franchising functions on their behalf through an agency agreement. Legislation will be clear that the devolved administrations will retain ultimate responsibility for the functions delegated to Great British Railways and will not affect the ministers' responsibility for the exercise of their functions.

It will be important that the Secretary of State is content with any arrangement as our intention is for Great British Railways to be an arm's length body of the Department for Transport and a body for which the Secretary of State will be sole shareholder.

Our intention is that legislation will also be clear that any agency agreement must also set out the circumstances in which the agreement may be varied or revoked. Before entering into any agreement, legislation will be clear that an agency arrangement must be consulted on and once agreed, published. This approach will provide certainty on the role and responsibility of each party and provide certainty for the wider industry.

Whilst we recognise this proposal does not set out the detail of what any agreement to delegate franchising functions should look like, this is a deliberate choice to allow for flexibility and to future proof the provision.

The powers, roles and responsibilities of the devolved administrations will be respected, including where this provides flexibility for the Scottish or Welsh Governments to involve the public sector. As set out, the exact terms of any arrangement will need to be mutually acceptable to the Scottish or Welsh ministers, the Secretary of State and Great British Railways including ministerial preferences for how Great British Railways might interact with the public and private sector within existing devolution settlements.

### **What this means for other devolved rail bodies**

The rail devolution settlements for Scotland and Wales are different to those for devolved rail authorities within England. Both Scottish ministers and Welsh ministers have devolved franchising authority powers as set out within section 23 of the Railways Act 1993. Section 23 provides that passenger services may be designated as franchised services that will be provided pursuant to franchise agreements.

In order for passenger services to be provided or contracted by devolved rail authorities within England, they must be exempted from the franchising regime under section 24 of the Railways Act 1993. Services that have been exempted by section 24 and which are provided or procured by a body other than the franchising authority are usually provided under a contract known as a "concession" let by the devolved transport authority. Concession holders are paid a fee to run the service and are not subject to the same conditions as franchisees are under section 23. As set out in the Plan for Rail, existing devolution of such services will remain and be unaffected by our proposals.

As devolved rail authorities within England are not subject to the same legislative requirements as the Scottish ministers and Welsh ministers, including English devolved rail authorities within this proposal would not be appropriate. As referenced in response to question 2, our intention is for local authorities in England, both those with and without devolved contracting responsibilities, to have the opportunity to agree partnerships with Great British Railways that will enable greater local influence over the local rail offer.

## Question 4 - Direct Award to a Public Sector Operator in Specified Circumstances

### Proposals

The Plan for Rail sets out the replacement of the previous franchising approach with a new generation of Passenger Service Contracts with private partners operating trains under a contracted model. As part of this change, most of the powers and responsibilities held by Secretary of State as the franchising authority under the Railways Act 1993 will transfer to Great British Railways, meaning that these Passenger Service Contracts will be overseen and procured by Great British Railways as franchising authority.

At present, section 25 of the Railways Act 1993 prevents the Secretary of State from awarding franchises to public sector operators. Once Great British Railways becomes franchising authority, section 25, if not amended, would prohibit Great British Railways (and Welsh ministers) from awarding franchises to public sector operators.

The position is different in Scotland, where a previous amendment to section 25 enables a public sector operator to be considered for a franchise rather than as a last resort.

We proposed amending section 25 of the Railways Act 1993, which prohibits the appointment of a public sector operator for services let by Great British Railways (and those let by Welsh ministers), to allow for direct award to a public sector operator in specific circumstances. It was proposed that these would be where an existing contract ends mid-way through a major infrastructure project or delivery of a major industry reform programme and where the uncertainty associated with the delivery of those initiatives would make it difficult to compete and a short-term direct award to a private sector operator may deliver poor value for money for the taxpayer.

We proposed that these circumstances would be set out in legislation and would be limited to instances where, in the judgment of the franchising authority, the selection of a public rather than private sector operator would help to achieve a value for money outcome in one of the limited circumstances, such as infrastructure improvements, set out in the legislation.

We also proposed that additional detail on the criteria and the circumstances in which they may be utilised would be added in the franchising policy statement published by the Secretary of State.

There remains a strong commitment for franchising services to be provided by the private sector and to re-energise and enhance the role of the private sector. Reflecting that aim, we proposed that public sector operators would still be prohibited from competing against the private sector for awards in England and Wales.

**We therefore asked:**

**Do you have any views on the proposal to amend section 25 of the Railways Act 1993 to enable appointment of a public sector operator by Great British Railways by direct award in specific circumstances? Please explain.**

## What you told us

This question attracted a high volume of responses. Many train operating companies who responded did not agree with the proposal. Other respondents including regional transport bodies, individuals and industry trade unions did support the proposal and in some cases used their response to call for greater involvement of the public sector.

Many of the responses sought greater detail about when and how the proposal would be utilised in practice.

### Consequences for the private sector

Many of the responses that disagreed with the proposal did so on the basis of perceived negative consequences of the proposal on the private sector and the industry.

#### Innovation and competition

Some train operating companies cited their belief that the private sector was better at delivering efficiencies and managing large change projects innovatively and so awards to public sector operators in times of significant projects or reforms risked increased costs or inefficiencies.

Some of these responses identified a concern that the proposal would have a negative effect on competition in the market because bidders would be reluctant to compete for contracts if there was a risk that a competition later collapsed if it was decided to instead make a direct award, as this would lead to a loss of bid costs and resources.

Some responses said that uncertainty over the duration of direct awards may also have a negative effect on competition as private-sector bidders would not be able to plan resourcing and bid opportunities in the absence of transparency about when contracts would be made available for the private sector again.

Some responses suggested that any direct awards should be subject to prescribed time limits to ensure that contracts were returned to private-sector competition at the earliest opportunity.

### Control of the process for making a direct award

Some responses expressed a concern that if there was a lack of clear oversight and transparency, the system could be vulnerable to mismanagement. To mitigate against this risk, some respondents noted that Great British Railways should be subject to oversight and must act transparently when exercising this power.

Some responses were broadly supportive of the proposal in principle but noted that it was important that clear information and guidance was given about when such awards could be made and what conditions had to be satisfied prior to an award being made to enable a full consideration of the consequences of the proposal. Some responses suggested that policies should be published to confirm when and how the power could be used, as well as

requesting transparency in the decision-making process including confirmation of how long direct awards would last for.

### **Effects of public sector involvement**

Supporters of the proposal thought it was a sensible and proportionate response to ensure continuity of service and minimise disruption for passengers.

Many supporters of the proposal commented that it could also help to achieve better outcomes for passengers and taxpayers.

Some of the responses advocated even greater public sector involvement, saying that section 25 should be expanded to allow for the appointment of public sector operators in a broader range of circumstances, beyond those instances of major industry reform or infrastructure projects set out in the consultation. This included allowing for public sector operators where that would be in the public interest, and where the quality of service was poor.

Many of the responses submitted by individuals, passenger rights groups and trade unions considered that there should be no restrictions on public sector involvement, stating that public sector operators should be allowed to bid for all Passenger Service Contracts or that the sector should be fully nationalised.

Some responses expressed the view that public sector intervention should be limited to instances of emergency or competition failure. They said that in those circumstances the potential for public sector involvement already exists, via the ability of the public sector to provide 'operator of last resort' services under section 30 of the Railways Act 1993 (in instances where there is no private train operating company in place to provide services).

Consequently, the proposal in the consultation document was considered unnecessary as this existing power was considered sufficient in instances requiring emergency public sector intervention.

## **Our response**

### **Consequences for the private sector**

The government has considered carefully whether to proceed with this proposal having reviewed the responses to consultation.

The government has made clear its commitment to enhance and reinvigorate the role of the private sector to drive growth and innovation and attract customers back to rail. The private sector is central to the future of the railways, and a return to competition, which delivers both innovation and value for money for the taxpayer requires a competitive market with new and established bidders delivering benefits for passengers and taxpayers.

A strong presumption in favour of the private sector will remain in the legislative framework. Section 26(1) of the Railways Act 1993 provides for the selection of private sector franchisees via competition, and section 26(4A) requires the Secretary of State to

publish a statement of policy about how that power should be exercised. As is the case today, under Great British Railways the presumption will be that franchises will be competed in the private sector in the first instance and neither Great British Railways nor any other public body will be allowed to compete alongside the private sector for franchises (except in the case of Scottish franchise agreements). If private sector competition is not possible, a direct award should be agreed where practicable with a private sector operator. In the second instance, and it is only if Great British Railways, as franchising authority, is unable to secure an appropriate contract with a private sector operator that a public sector operator, such as one currently operating under the Department for Transport Operator of Last Resort Holdings Limited, will be considered. Great British Railways will be required to have regard to the Secretary of State's franchising policy statement which will be subject to consultation and published, as is required today.

The government recognises that private sector innovation has been, and will be, crucial to improving the efficiency and growth of the railways and the Secretary of State has been clear that his vision is to enhance the role of the private sector. This proposal was designed to address a specific, limited and targeted set of circumstances where it was considered that the private sector may not represent the best value for money or outcome for the railways.

Government is committed to delivery through the private sector to maximise competition, innovation and revenue growth right across the industry. The circumstances in which we envisage we would have used this power would only have occurred rarely. We therefore do not think it appropriate to add a power facilitating public sector operation of the railway beyond our existing section 30 powers, if to do so is a disincentive to private sector participation. We will not be proceeding with this proposal.

### **Effects of public sector involvement**

We are committed to enhancing the role of the private sector.

With respect to the suggestions for even broader public sector participation, the government does not believe that nationalisation will solve the challenges facing the railways today. We do, however, propose a pragmatic partnership between state and industry, harnessing the necessary oversight of the state with the dynamism, innovation and efficiency of the private sector and retaining the existing prohibition on public sector operator involvement in competitions to protect the private sector from unfair competition.

The circumstances in which public sector intervention is required under a section 30 operator of last resort scenario is separate and distinct from this proposal.

## Question 5 - Revoking and Replacing Regulation 1370/2007 Retained EU Law

### Proposals

To assist the reforms outlined in the Plan for Rail and to ensure the smooth introduction and running of Passenger Service Contracts, in the consultation we proposed changes to regulation 1370/2007 Retained EU law, with the purpose of making the provisions work better for Great Britain and ensuring the ongoing operation of the rail contracting regime. Regulation 1370/2007 is cross-modal legislation which creates a bespoke procurement and state aid or subsidy regime for 'public service contracts' for rail passenger services, as well as contracts for bus and tram concession services outside the general procurement and state aid rules, in recognition that such contracts are needed in the general interest of the public and cannot be operated on an entirely commercial basis.

The coming into force of the Retained EU Law (Revocation and Reform) Act (REUL) presented an important opportunity to facilitate changes to regulation 1370/2007 which would support the smooth operation of future contracts and make the passenger service procurement regime work better in Great Britain. The Public Service Obligations in Transport Regulations 2023<sup>1</sup> (the "2023 Regulations") were laid before Parliament on 16 October 2023 for approval by resolution of each House of Parliament. This revoked and replaced regulation 1370/2007, including certain drafting and policy changes to ensure we have the flexibilities we need to obtain value for money for taxpayers, in particular reinstatement of direct award powers which expired on 25 December 2023. The 2023 Regulations statutory instrument came into force on 25 December 2023.

The 2023 Regulations:

- introduce domestic legislation for awards made under regulation 1370/2007 that reduces the limitation period for the challenge remedy (the route through which a train operator can challenge decisions) to provide a relatively short period of one month for challenges to be made;
- introduce a recovery remedy and clarify who may bring a claim, in order to comply with the EU-UK Trade and Cooperation Agreement (TCA) and to accord with the new UK subsidy regime;
- reintroduce Articles 5(6), which provides maximum flexibility in making direct awards for heavy rail, and 7(3), which ensures transparency for awards made under Article 5(6), to ensure that flexibility and transparency in making direct awards is retained;
- amend the wording of Article 7(2), which details the notice period for publishing a Prior Information Notice (PIN) before an Invitation to Tender (ITT) or direct award, to ensure clarity.

**In the consultation we asked:**

**Whether you support the proposed amendments to regulation 1370/2007 and to explain why.**

---

<sup>1</sup> [The Public Service Obligations in Transport Regulations 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/the-public-service-obligations-in-transport-regulations-2023)

## What you told us

Of those respondents who expressed a preference, organisations were more likely to support the proposals than individuals. Whilst most individuals were opposed to the proposals, the majority of organisations neither supported nor opposed the proposals (don't know or did not answer).

### Challenge period

Some respondents, although supportive of a reduced challenge period, proposed a challenge period of more than one month in order to allow adequate time for the complexity of rail contracts to be digested and information obtained and ensure that challenge does not become the default approach in a shorter timeframe.

Other respondents suggested that the challenge period should align with the Procurement Bill, which provides for a minimum challenge period of 30 days rather than one month.

### Direct awards - impact on competition and transparency

Those who supported retaining direct awards for heavy rail did so with the stipulation that competition should not be hindered. They also stressed the need to retain the transparency requirement - whereby the awarding authority has to provide details to other bidders within one year of granting the award. Some respondents who supported retaining direct awards for heavy rail under Article 5(6) also wanted direct awards under this article to be extended to cover other track-based modes, such as tramways and metros, and bus contracts.

Some respondents said that there should be limitations on how or when direct awards are used, ensuring that competition was the default. Other respondents noted that retaining direct awards would be a useful tool in the interim period until Great British Railways is set up and Passenger Service Contracts are fully introduced.

### Recovery remedy

Respondents said that they would appreciate more detail around what exactly is being proposed concerning the introduction of a remedy of recovery to accord with the new UK subsidy regime. Some respondents wanted to see a role for the Competition and Markets Authority including pre-approval advice which would help mitigate challenge risk.

Some respondents wanted any recovery remedy to be consistent with the remedies in the Subsidy Control Act 2022 to provide certainty for all parties.

Regarding the question of who may bring a claim, some respondents wanted the scope of claimants and the definition of “interested” and “affected” parties to be consistent with the proposals and definitions set out in the Procurement Bill and Subsidy Control Act 2022 respectively.

## Prior Information Notice

Those who agreed with the proposal felt that providing clarity was helpful and that the one-year time period remained appropriate.

Others were of the view that reference to publication on “gov.uk” appears to assume that this would only apply to the UK Government exercising its franchising function, whereas it would equally apply to competent authorities other than the UK Government.

## Our response

### Challenge period

We have considered the points raised concerning whether a one-month challenge period is sufficient to consider detailed information and take a decision on whether to challenge. The 2023 Regulations mirror the Subsidy Control Act provisions (in order to comply with the EU-UK Trade and Cooperation Agreement) so that the challenge period runs for one month from after publication of information on the competent authority's website or the proposed single central digital platform.

Potential claimants will also benefit from revisions to ensure compliance with the EU-UK Trade and Cooperation Agreement. Under this treaty, claimants have the opportunity to ask for additional information; they have one month from publication to do so. They then have an additional one month after receiving the requested information to decide whether to proceed. In addition, the court can choose to apply discretion in particular circumstances, which means that if it so chooses the court can extend the deadline. The one-month period, instead of 30 days as suggested by some of the respondents, was chosen for compliance with Article 373(3)(b) of the EU-UK Trade and Cooperation Agreement, which requires a minimum challenge period of one month.

### Direct awards - impact on competition and transparency

It is the intention to return to competition as quickly as possible. We consider the powers provided under Article 5(6) necessary to manage the programme of passenger rail contracts that we will need to deliver in the interim. The powers in Article 5(6) are not new but were due to expire under 2016 EU legislation. Article 5 contains other direct award powers extending to other modes of transport, which will not be affected by the proposed change to Article 5(6). Currently, there is no intention to extend award rights beyond the status quo.

We understand the concerns raised by stakeholders in respect of suppressing competition, and we believe that the transparency requirement will provide reassurance that this power is not being used to hold back competition.

Our proposals overall will ensure that transparency is achieved more quickly. Currently, contract award information is only published in an overall yearly report (apart from heavy rail direct awards under Article 5(6), which have a further transparency requirement) - we are planning to introduce a contract award notice requirement which will require information to be published, for each award, 2 months after an award. This will mirror the

Subsidy Control Act 2022 and publication requirements in the mainstream procurement regime as well as complying with the EU-UK Trade and Cooperation Agreement.

### **Recovery remedy**

Respondents have asked for more information around the role of the Competition and Markets Authority and on the recovery remedy. We have listened to your concerns and after further consideration we set out our response below.

It is our intention that the Competition and Markets Authority will have a monitoring role in considering the effectiveness of the UK subsidy regime under the Subsidy Control Act 2022 (of which regulation 1370/2007 is a legacy scheme). It is the Competition Appeal Tribunal rather than the Competition and Markets Authority that has the power to order the remedy of recovery of unlawful subsidy under the Subsidy Control Act 2022. For regulation 1370/2007, the court venue is left to judicial discretion.

In respect of the request for more detailed information on how the remedy of recovery will operate, the 2023 Regulations closely follow section 74 of the Subsidy Control Act 2022.

Regarding the scope of claimants and the consistency of the definitions used for “interested” and “affected” parties, the proposed wording was chosen for consistency with the Subsidy Control Act 2022. The rationale is that the Subsidy Control Act regime is, in terms of routes of challenge, closer to those under regulation 1370 than the mainstream procurement regime. Regulation 1370/2007 itself (Article 5(7)) requires an effective remedy for parties having an interest in a contract.

### **Prior Information Notice**

The 2023 Regulations retain a one-year Prior Information Notice period, which was the general preference of respondents.

We have considered the comments expressed by respondents regarding the reference to the publication of the Prior Information Notice on the “gov.uk” website. To clarify, this is not specific to UK Government, as the Prior Information Notice would be published on the relevant competent authority’s website.

## Question 6 - Securing Better Use of the Rail Network

### Proposals

The consultation proposed a simple and efficient access framework underpinned by legislation that ensures fair, transparent and non-discriminatory allocation of capacity which is vital to a competitive and well-functioning railway.

Our proposed reforms will enable Great British Railways to strategically plan and manage access to the network in the public interest, getting the best outcomes for taxpayers, train operators and funders.

As set out in the consultation, alongside our package of targeted reforms we will ensure the continued independent regulatory oversight of the access and capacity allocation framework by the Office of Rail and Road. As now, fairness and non-discrimination requirements will be underpinned by legislation and the Office of Rail and Road will maintain its independent and impartial role in access appeals and approving and directing access to Great British Railways' network.

The department strongly welcomes the benefits that can be achieved from open access services, including the benefits of improved connectivity, choice and innovation. We particularly support open access services where they provide new routes to grow markets for rail, effectively use spare capacity and provide benefits to passengers. We are looking at how we can further support open access operators by supporting new opportunities for their growth and development, whilst not disproportionately impacting taxpayers nor creating congestion or operational issues which ultimately disadvantage customers. Open access is discussed further under the response on the Office of Rail and Road's competition duty below.

Our package of proposed reforms comprises the following:

- simplification of industry processes;
- a new duty for the Office of Rail and Road to have regard to Great British Railways' policies on matters of access to and use of the railways where these have received Secretary of State approval;
- recasting of the Office of Rail and Road's competition duty to better reflect public sector funding;
- technical amendments to the Railways Access and Management Regulations 2016 to facilitate the transfer of responsibilities from the Secretary of State to Great British Railways;
- a power to amend rail markets secondary legislation.

### Reform of industry processes

The establishment of Great British Railways presents a significant opportunity to simplify processes and procedures across the industry. Bringing track and train closer together offers the chance to look closely at how the railway operates. Changes to the existing complex framework for access, alongside an amended regulatory approach can bring

major benefits and are necessary for a more effective approach to managing network capacity.

The Great British Railways Transition Team were commissioned to work across the rail industry to identify opportunities for simplifications and efficiencies to industry processes. The Transition Team engaged with over 200 individuals representing over 80 organisations across the rail industry, and have made a number of detailed and technical recommendations designed to deliver a simpler, better and more integrated railway which works better for its freight and passenger customers and taxpayers. This is vital work that will support delivery of the government's ambitions for a simpler and more efficient framework of rules, processes and controls on access and the use of the railway, whilst maintaining key protections for operators on non-discrimination, fair treatment, and transparency. Some of these recommendations will require legislative change to implement and ministers are considering next steps. The Great British Railways Transition Team have published the report, including its findings and recommendations on their website<sup>2</sup>.

In respect of the rail sector, our approach to Retained EU Law (REUL) is to prioritise areas for reform where we believe there are genuine opportunities to remove bureaucracy and identify simplifications by tailoring REUL to better meet the needs of passengers, operators and taxpayers in Great Britain. We will continue our regular engagement with the rail industry throughout the REUL programme.

### **A new duty for the Office of Rail and Road to have regard to Great British Railways' policies on matters of access to and use of the railways where these have received Secretary of State approval**

As set out in the consultation, the government believes that it is crucial that the Office of Rail and Road continues to play a central role in ensuring that applications for capacity are treated fairly and transparently. The government also wants the Office of Rail and Road to play a vital role in the access regime, actively overseeing Great British Railways to plan and manage the network in the public interest. It will be important that the Office of Rail and Road oversees a clear rules-based system, where Great British Railways and public sector funders work together to align and co-ordinate their decision-making processes and timescales, with the aim of ensuring the appropriate decisions about the use and operation of the network are more effectively led by Great British Railways as the Secretary of State's expert rail body.

The consultation proposed a new duty for the Office of Rail and Road to facilitate the furtherance of Great British Railways' policies on matters of access to and use of the railway, where these have received Secretary of State approval, and to take them into account when carrying out its functions as the regulator for access. In advance of the consultation the government worked closely with the Office of Rail and Road to ensure that the new duty did not conflict with existing duties and did not compromise the Office of Rail and Road's independence. The proposed new duty was designed to provide the Office of Rail and Road with a clear and specific legal requirement to take Great British Railways' approved access policies into account in its decision-making.

---

<sup>2</sup> [Simpler, better industry processes | Great British Railways Transition Team \(gbrtt.co.uk\)](https://www.gbrtt.co.uk)

## **We asked:**

**Do you support the proposed statutory duty on the Office of Rail and Road to facilitate the furtherance of Great British Railways' policies on matters of access to and use of the railway, where these have received Secretary of State approval?**

## **What you told us**

The majority of those who responded to this question opposed this new duty for the reasons set out below.

### **Independence of the Office of Rail and Road decision-making**

Several local authorities, councils and transport bodies were supportive of the proposed new duty, noting that it should ensure the Office of Rail and Road can maintain effective regulatory oversight, including monitoring whether Great British Railways is acting transparently and fairly towards rail freight and passenger operators.

The Office of Rail and Road gave a view on the practicality of the new duty, commenting that it gave the regulator "a clear and specific legal basis to take account of such an overarching railway access strategy in [its] decision-making without compromising [its] independence. The Office of Rail and Road decisions will continue to be independent judgements based on all [its] statutory duties".

Those who opposed included train operating companies and third parties, including representatives from the freight industry. These respondents voiced concern that the wording of the proposed new duty would weaken protections as it could risk compromising the Office of Rail and Road's independence.

Some respondents commented that the Office of Rail and Road must act entirely in the public interest and free from government interference, while protecting third parties from an overly powerful infrastructure manager. Some respondents expressed concern that the new duty gave too much prominence to Great British Railways, thus exacerbating the risk of a dominant Great British Railways with too much control over the network.

### **Alignment with other policies**

Some respondents believed that the new duty might conflict with the Office of Rail and Road's existing duty to promote competition on the railways and that it would add complexity to decision-making processes.

Others in favour commented that the new duty supported the principle of greater coherence and clarity of shared decision-making across the network and would lead to greater efficiency of decision-making.

The Office of Rail and Road also recognised the new duty's potential to support opportunities "to improve the transparency, pace, quality and coherence of decision-making", while preserving the Office of Rail and Road's independence and ability to take action where Great British Railways has not followed its policy.

## Our response

### Independence of the Office of Rail and Road decision-making

It is our intention for the Office of Rail and Road to continue to provide independent oversight of the access framework, including ensuring fairness and non-discrimination. The government recognises that the proposed original wording of the new duty caused concern amongst some respondents that the Office of Rail and Road's independence would be undermined. Specifically, "facilitate the furtherance" could have been seen as taking active steps to giving Great British Railways prominence over other infrastructure managers or franchising authorities, or giving preference to some operators over others. To address these concerns, we have revised the wording of this proposed duty. The government intends to introduce legislation giving the Office of Rail and Road a new duty that will require the Office of Rail and Road to have regard to any policy statement on access to and use of the railway approved by the Secretary of State and published by the Integrated Rail Body (namely, Great British Railways). The Office of Rail and Road have confirmed that the revised wording does not alter their view of the practical application of this duty.

The revised drafting changes the intent of this proposed duty to one of the Office of Rail and Road taking into consideration Great British Railways' access policy statement, rather than a duty to proactively facilitate it. This proposed new duty will provide the Office of Rail and Road with a clear and specific legal basis to take into account Great British Railways' overarching strategy on matters of access to and use of the railway in the regulator's decision-making, while maintaining the Office of Rail and Road's independence. This duty would have equal status to the Office of Rail and Road's other duties (meaning it would not have primacy).

As is the case today, it is our intention that the Office of Rail and Road will continue to make independent judgements based on the weighing of its statutory duties. While the Office of Rail and Road's new duty will support greater coherence between funders, Great British Railways and the regulator, it does not force the Office of Rail and Road to implement Great British Railways' access policy and nor does it compromise the Office of Rail and Road's independence in ensuring that Great British Railways has followed its own published policy and directing corrective action where it has not.

The Office of Rail and Road will continue to have independent oversight of the access framework, including its role as an approval and appeals body for access. The Office of Rail and Road will continue to take decisions on directing and approving access rights for all operators and will have the power to issue standard clauses. This gives the Office of Rail and Road a deciding role on any applications for rights and on the form and structure of any access agreement.

### Alignment with other policies

The Great British Railways Transition Team will develop a future Great British Railways policy for access to and use of the railways (Access and Use Policy). This policy will set out the principles of how Great British Railways will make decisions about the future use and development of the railway to support a consistent, transparent and fair framework in

order to: help operators and freight customers plan and invest; provide criteria to ensure integrated whole system value decision-making; align Great British Railways' decisions across different stages of planning and delivery; provide clarity for operators, freight operators and stakeholders on how to challenge Great British Railways' decisions and seek recourse; and align Great British Railways' role as guiding mind with funders and with the Office of Rail and Road.

Some respondents highlighted the difficulty of commenting on the proposed new Office of Rail and Road duty before industry wide discussions had started on Great British Railways' future Access and Use Policy. This makes clear the importance of ensuring Great British Railways involves the sector and consults widely as a future Access and Use Policy is developed. The Transport Secretary will ensure that Great British Railways consults on a draft Access and Use Policy and that the Office of Rail and Road's response to the consultation, including on matters of non-discrimination, transparency and the Office of Rail and Road's ability to fulfil its statutory duty to have regard to the policy, are taken into account before approving Great British Railways' Access and Use Policy.

The proposed new duty will ensure clarity between funders, Great British Railways and the regulator without compromising the Office of Rail and Road's independence. For the avoidance of doubt, the existing Office of Rail and Road duties in the Railways Act 1993 relating to its role, including in the devolved administrations, will remain unchanged.

## **Question 7 - Technical amendments to The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 to facilitate the transfer of responsibilities from the Secretary of State to Great British Railways**

### **Proposals**

#### **Power to amend**

The consultation set out the opportunity presented by the creation of Great British Railways, and our exit from the EU, to simplify the key industry processes, contracts and codes that govern access and the use of the railway by its freight and passenger customers and taxpayers. Some of these recommendations will require legislative change to implement so it is important that we have sufficient time to work with industry to fully test these proposals and where necessary consult on them further.

The consultation proposed that the government will include a power in the bill to amend rail markets secondary legislation. One potential use of this power would, subject to consultation, implement recommendations from the Great British Railways Transition Team simplifications commission. The power to amend cannot be used to amend primary legislation. Any amendments to regulations made using this power will be consulted on with industry and will be subject to parliamentary scrutiny and debate.

The scope of the power to amend will extend to the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016. As the railway evolves under Great British Railways, it may be necessary to update these regulations, which have historically been subject to legislative change on a relatively frequent basis. Each new version has either built on, amended or revoked the previous set of regulations.

The REUL Act contains time-limited powers to amend these regulations, which presents an important short-term opportunity to simplify some of the highly complex processes for how the railway is regulated. We are already engaging across the rail industry on our intended approach to using these REUL powers to promote a simpler railway. As the railways continue to evolve and modernise, the power in the bill will enable changes over the longer-term, which will ensure that the regulatory landscape can keep pace with developments in the market, whilst preserving key protections.

#### **Amendments to the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016**

The consultation set out that bringing track and train closer together under Great British Railways will require some immediate technical changes to the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, as these regulations set out requirements for separation of certain decision-making functions. As set out elsewhere in the consultation, the government's intention is to transfer some of these functions from the Secretary of State to Great British Railways.

We asked in the consultation whether respondents were aware of any immediate amendments we would need to make to facilitate the transfer of the functions detailed in the consultation, particularly the responsibility of franchising from the Secretary of State to Great British Railways. The government's intention is that any amendments made to these regulations in the bill would only apply to the Great British Railways managed network and would not apply to networks managed by other infrastructure managers.

### **We therefore asked:**

**Noting we will consult separately on the use of the power to amend the existing Access and Management Regulations, are you aware of any immediate essential changes that are needed to these regulations to enable Great British Railways to deliver its guiding mind function? Please explain.**

### **What you told us**

Whilst there was not a specific question in the consultation on including the power to amend in the bill, we received a number of responses to the consultation expressing views on its use which are considered below.

No immediate necessary amendments were identified by respondents, though this was anticipated given the highly technical and complex nature of these regulations. Alongside the formal written consultation, we undertook detailed discussions with industry and legal experts and held several roundtables and webinar events across the industry, prior to and during the consultation period, including with the rail freight industry, to test our thinking, explore options and the potential effect of any amendments.

This work enabled us to identify and test with industry 2 issues that if the regulations are not amended would prevent the full benefits of the reforms of a more integrated network being realised. It will be necessary to amend regulations 14(9) and 19(4) that deal with the separation of functions and the obligations to make payments under regulation 16 that deals with performance schemes. These are discussed in further detail below.

### **Power to amend**

There were concerns raised that the power might be used in the future to remove existing protections and rights to access the network while others thought there was a risk that the role of the Office of Rail and Road in ensuring fair access and non-discriminatory behaviour would be reduced.

Other respondents thought a power to amend sensible, recognising that there were opportunities to remove bureaucracy and simplify processes. Some welcomed the commitment that any amendments to the Access and Management Regulations recommended by the commission would only happen after consultation and analysis of implications.

Some respondents highlighted that it is important to the rail industry that any changes made by the power would need to be subject to the affirmative procedure, meaning that

any legislative amendments to the regulations would have to be debated in both Parliamentary Houses.

## **Separation of functions**

Parts of the Access and Management Regulations were designed to ensure the independence and separation of duties of the infrastructure manager and railway undertakings. Regulations 14(9) and 19(4) stipulate that when carrying out charging and capacity allocation functions, an infrastructure manager must be legally and organisationally separate from a train operator. Therefore, to facilitate Great British Railways being able to act as the integrated infrastructure manager and also fulfil its guiding mind function, we are minded to make 2 immediate technical amendments to the Access and Management Regulations (in regulations 14(9) and 19(4)). While Great British Railways will not operate its own trains, there is also a risk that if ministers decided in due course that responsibility for certain functions were to transfer from the department into Great British Railways - for example, if the Department for Transport Operator of Last Resort Holdings Limited (DOHL), the company that delivers operator of last resort functions, were to transfer - the restrictions in the regulations could mean that Great British Railways would have to move its capacity allocation and charging functions to another body, which would prevent Great British Railways from being the integrated body that it is intended to be.

In our discussions with industry on these specific amendments, many train operating companies were keen to ensure that there is further engagement regarding changes specific to Great British Railways' role. Several open access operators and freight operating companies raised concerns regarding effects the proposed amendments may have on the independence and impartiality of the infrastructure manager and how this could affect competition.

Some train operating companies raised concerns about the governance and accounting separation for Great British Railways and the effect this could have on the impartiality of access decisions. These comments align with others highlighting the industry's emphasis on non-discrimination protections being upheld with the Access and Management Regulation amendments to ensure fair competition on the railways.

## **Performance schemes**

Regulation 16 and Schedule 3 of the Access and Management Regulations require the infrastructure manager to establish a performance scheme on the railways that should encourage both the infrastructure manager and the train operators to minimise disruption and improve performance on the railways.

Responsibility for franchising, including managing National Rail Contracts, will transfer from the Department for Transport to Great British Railways. When this happens, the existing requirements in the regulations prevent Great British Railways from being able to manage the contracts in the same way as the department. Rather than seek to reopen and potentially renegotiate existing National Rail Contracts, which would come at huge cost to the taxpayer, we will make a technical change to the regulations to facilitate this transfer.

During meetings and roundtable events with the industry, there was widespread recognition of the need to amend the regulations as track and train is brought closer together. There was some concern amongst the rail freight and passenger open access operators that any changes should not impact on the independence and impartiality of the regulator and should not impact on existing rights to access the network within a fair and transparent access framework.

Some responses expressed the need for understanding of how the technical change aligns with the initial premise of the incentives outlined in the Plan for Rail. Other respondents felt that while there were opportunities for a better regime under Great British Railways it was important that existing non-discriminatory rules surrounding allocation of capacity were retained to ensure a competitive market.

## Our response

### Power to amend

We note the concerns raised by some respondents that the power might be used in the future to remove existing protections and rights to access the network, and others that thought there was a risk that the role of the Office of Rail and Road in ensuring fair access and non-discriminatory behaviour would be reduced. We want to reassure respondents that it is our intention that the principal requirements in the Access and Management Regulations that ensure fairness and non-discrimination in capacity allocation for freight and passenger operators will remain. Access for contracted passenger services will be assessed on the same transparent and non-discriminatory criteria as non-contracted operators.

The role of the Office of Rail and Road as an independent and impartial regulator, including its role in access appeals and approving and directing access to Great British Railways' network, will remain. As now, it will act independently to ensure non-discrimination and take account of third-party interests in determining access charges and overseeing the regulated performance regime via the periodic review process.

The Great British Railways Transition Team have published their report on the commission, which contains a number of detailed and technical recommendations designed to deliver a simpler, better and more integrated railway which works better for its freight and passenger customers and taxpayers. Some of these recommendations will require legislative changes to implement and ministers are considering next steps.

As the railways continue to evolve and modernise, the power to amend will ensure the regulatory landscape can be updated to be fit-for-purpose, whilst preserving key protections. Any new secondary legislation brought forward using the power to amend will be consulted on, and will be subject to parliamentary scrutiny through both chambers of the Houses of Parliament, before they are made.

### Independence of functions

We welcome broad acceptance from several respondents that Great British Railways will need to be an integrated rail body that brings together track and train.

We acknowledge concerns raised by some respondents about the governance and accounting separation for Great British Railways and the effect this could have on impartiality of access decisions. This is covered above.

Following consultation and discussions with industry, we are minded to make 2 immediate technical amendments to the Access and Management Regulations (in regulations 14(9) and 19(4)) to facilitate Great British Railways being able to act as the integrated infrastructure manager and also fulfil its guiding mind function (see Separation of Functions and Performance schemes).

## **Performance schemes**

We understand concerns raised in some industry responses around maintaining key protections for non-Great British Railways operators and ensuring a clear and functional performance scheme.

Under the Access and Management Regulations, the infrastructure manager (IM) is required to have a monetary performance scheme.

National Rail Contracts (NRCs) have now replaced the traditional franchises. Under National Rail Contracts, the Department for Transport, as the franchising authority, holds cost and revenue risk for its National Rail Contracts and, as it is not an infrastructure manager, is not captured by the requirements in the Access and Management Regulations to have a monetary performance scheme. This means that it can negate the existing monetary performance scheme for its National Rail Contract train operating companies to ensure that they are not compensated for lost revenue when revenue risk sits with the Department for Transport.

As Great British Railways will be designated as the new integrated rail body, it will become the franchising authority as well as the infrastructure manager, and will continue to be subject to the Access and Management Regulations. As such, under the current Access and Management Regulations, it would be required to have a monetary performance scheme. An amendment to the Access and Management Regulations will therefore be required.

Without an amendment, responsibility for National Rail Contracts cannot transfer to Great British Railways. We have tested our approach with the Office of Rail and Road and will continue to work closely with them on this matter.

This proposed amendment will facilitate National Rail Contracts being transferred to Great British Railways, enabling Great British Railways to function in its dual role as infrastructure manager and franchising authority. The amendment will not affect the arrangements surrounding performance schemes for train operators not contracted by Great British Railways, such as freight and open access operators.

## Question 8 - A widening of scope of the Office of Rail and Road's duty to promote competition to better reflect public sector funding

### Proposal

As set out in the consultation, rail is different to many consumer markets given the scale of public money involved, so it is important that this is given due consideration by the regulator when making decisions in what is a mixed public and private market. To further strengthen protections for taxpayers, we proposed that in addition to the Office of Rail and Road's existing duty to have regard to the Secretary of State's funds, there should be a limited legislative amendment to the Office of Rail and Road's existing section 4(1)(d) competition duty so that the regulator also takes into consideration public sector funding of rail services in applying the competition duty - including when the Office of Rail and Road takes decisions relating to access to the track. As today, this duty would receive no prioritisation in legislation; the Office of Rail and Road's duty to promote competition is just one duty the regulator must weigh alongside its other duties.

### We asked:

**Do you agree with the proposed recasting of the Office of Rail and Road's competition duty to better reflect public sector funding?**

### What you told us

Most respondents to the consultation did not respond to this specific question, but for those who did, responses were mixed. Some respondents were supportive of increasing the scope of public sector funding considerations whilst others described the Office of Rail and Road's existing duties as being sufficient without a need to recast the duty. Some concerns were raised regarding potential administrative burdens.

Some expressed concern that private sector investment would be discouraged by the amended competition duty. Several respondents thought that the amended duty would make it more difficult for open access operators to gain access to the track, thus potentially weakening private sector involvement. The Office of Rail and Road also noted that there could be concern amongst some stakeholders that the revised duty may make it less likely that the Office of Rail and Road would approve or direct additional passenger open access services.

The rail freight sector is already a strong private sector competitive market and there was concern that the amended duty could impact on this. Some freight industry representatives recommended that freight be excluded from the duty given the Plan for Rail's clear commitment to growing rail freight and that rail freight does not abstract revenue from the network in the same way as open access passenger services can.

## **Weighting given to public sector funding considerations**

Supportive respondents typically agreed that a greater weighting should be given to public sector funding considerations. Some of those who agreed with the proposed recasting of the duty thought that the benefits of competition had been limited and that a not-for-profit model for the railways was the correct way forward.

The main concern raised by respondents was that the Office of Rail and Road's competition duty should not be weakened, particularly given the substantial role that Great British Railways will have in managing the use of the network. Some respondents also noted that they believed the recasting of this duty was not necessary due to the opinion that the Office of Rail and Road's existing duties are already effective and broad enough.

In addition, respondents felt that the amended duty may lead to an increase in the administrative burden on the Office of Rail and Road and prospective open access operators. The Office of Rail and Road noted that this was just one duty they must weigh alongside other duties, and that they could not anticipate what the impact of it may be on individual decisions.

There were also concerns raised that the efficiency of rail markets with high numbers of passenger service operators could deteriorate due to a potential lack of competition.

There was a mix of freight and passenger operators and owning groups who opposed the proposal. Many of them cited the need for a strong competitive regime for the railways while others thought that the Office of Rail and Road's statutory duties already required the Office of Rail and Road to take into account public sector funds, so the amendment was unnecessary.

## **Our response**

### **Impact on private sector**

The government believes that competition and the role of the private sector has been greatly beneficial to passengers, and the Plan for Rail outlines opportunities for open access where spare capacity exists to ensure best use of the network and to grow new markets for rail. Open access operators bring benefits for passengers that use these services, open up new markets, reduce ticket prices and drive innovation by competing with existing franchised operators.

The proposed amendment to the Office of Rail and Road's competition duty may incentivise open access operators to identify more innovative applications that seek to offer services not already covered by contracted operators. Open access operators may particularly identify opportunities which might not have been apparent to the franchising authority - and potentially lead to more open access on the network - through the growth and development of new, innovative services.

Several respondents to our consultation noted that access for rail freight operators is an important consideration and that rail freight does not abstract revenue from the network in the same way as can open access operators.

We have listened to this feedback, and our proposed amendment is now limited only to passenger service operators and so will not apply to decisions on access applications from rail freight operators.

### **Weighting given to public sector funding considerations**

We recognise the concerns raised by respondents that the proposed amendment could weaken the Office of Rail and Road's duty to promote competition when making access decisions. The Office of Rail and Road's existing section 4 duty in the Railways Act to promote competition is currently framed so that it only takes account of users of railway services.

Given our intention that Great British Railways will operate in a mixed public and private market, and the high level of publicly funded subsidies that go into the railways, this duty should acknowledge the interests of the taxpayer as well.

The proposed legislative change to the Office of Rail and Road's competition duty will ensure the regulator evidences how they have taken the impact on public funds into account. At present, while the Office of Rail and Road does have duties relating to value for money considerations, the department is of the view that explicitly referencing the funder in the competition duty will give a greater weighting to taxpayer funds in future.

The proposed amendment is not intended to stop new open access applications. Indeed, the government envisions an important role for open access operators on the railways and we are clear that Great British Railways should work proactively with the market to identify appropriate opportunities for open access operators in the future. However, it is also important to recognise that competition should benefit all users and funders of the railways. Following feedback to the consultation we will ensure that the proposed new duty does not capture rail freight and gives the Office of Rail and Road discretion in adopting a 'reasonable' approach.

We recognise that there remains uncertainty around how this duty may work in practice. The Office of Rail and Road will have this duty, which it will apply independently alongside its other statutory duties. This includes the Office of Rail and Road continuing to be required to take into account guidance issued by government, alongside those wider duties. The version of this guidance associated with the set up of Great British Railways will set out our expectations in relation to this duty and be published.

It is our intention for the Office of Rail and Road to remain the competition authority for the railways, so it has the powers of the Competition and Markets Authority under the Competition Act to deal with anti-competitive agreements or abuses of a dominant position where the relevant activities pertain to the supply of services relating to the railways in Great Britain. It is not proposed that this concurrent jurisdiction be altered in any way. The amended competition duty will apply only (as does the current duty) to functions carried out by the Office of Rail and Road under part 1 of the Railways Act 1993 and the Railways Act 2005. The Office of Rail and Road decisions will continue to be independent judgements based on all their statutory duties and the Office of Rail and Road's Competition Act functions will not be affected by this change and will continue to apply. The Office of Rail and Road will continue to provide guidance on how they make track access decisions.

## Questions 9, 10 and 11 - Driving efficiency and innovation by removing barriers to collaboration between Passenger Service Contract Operators

### Proposals

The Plan for Rail places a strong emphasis on collaboration across the whole of the industry to achieve benefits such as securing significant efficiencies, removing duplication, and a focus on the things customers have told us matter to them.

These include:

- safe, punctual, reliable and good value services;
- encouragement of more innovation that will continue to improve services and connections with other modes of transport;
- a joined-up approach to finding a resolution when things go wrong;
- a simple consistent fares structure.

Chapter I of the Competition Act 1998 prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices that may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom unless a relevant exemption applies. This can prevent competitors sharing commercially sensitive information with each other. Historically, this has restricted collaboration and co-operation between train operators. We have been considering legislative changes that would enable Great British Railways operators (operators contracted by Great British Railways) to share information and undertake other collaborative activities with each other in circumstances where doing so could otherwise give rise to concerns under chapter I of the Competition Act 1998.

**In the consultation, we asked:**

- **What do you think of the proposal to include in legislation, a power for Great British Railways to issue directions to its contracted operators to collaborate with one another?**
- **What are your views as to whether train operating companies would be willing to share information and collaborate in the way envisaged without the proposed legislative provisions? What do you think the risks are to the Great British Railways contracted operators without the proposed legislative changes, and do you think that the proposed measures help to resolve these risks?**
- **What, if any, particular additional safeguards you consider necessary?**

### What you told us

While a high proportion of respondents who did respond to these questions were generally positive about or supportive of the policy intention, several industry stakeholders raised specific concerns. Further consideration of the concerns raised has highlighted challenges in delivery that we think are too difficult to overcome. We are therefore no longer proceeding with legislation in this area. Concerns raised by respondents included:

## Safeguards

Respondents suggested that the Office of Rail and Road should have a role in acting as an independent monitoring body to help prevent any unintended consequences of information sharing. Some respondents suggested that operators needed confidence that they would not be found in breach of competition law if they were complying with a requirement from Great British Railways to collaborate in good faith. In addition, they needed confidence that any commercially sensitive information they shared in compliance with such a requirement would not be exploited.

Some respondents suggested that directions would need to be specific enough to ensure the collaboration was clearly within the scope of the direction to mitigate properly against legal risk. They were concerned that failure to do so could lead to criminal action against the operator.

Other responses noted that, assuming the proposed approach does reduce the competition law risk, the design should aim to provide a suitably narrow focus to ensure that collaboration does not extend beyond the minimum necessary.

## Commercial and open data

Some respondents answered that commercial data should be excluded from the competition law carve out in order to guarantee that data requests do not impact on commercial activity of any stakeholder in the rail sector for fears this would lead to loss of competitive edge and a reduction in revenue.

Others put forward that the Department for Transport (and in the future Great British Railways) could consider requiring a fully open data approach where possible, for example making certain types of information held by Great British Railways available to all and ensuring that information provided by train operating companies' collaborating is made available to third party competitors at the earliest opportunity. In a similar vein, others noted that much operational data is already shared between operators and, in many examples, is publicly available already.

## Contract use

Some respondents suggested that the levers for the franchising authority to require collaboration largely already exist within contracts and existing industry frameworks and these should remain and be enhanced at the contractual level.

## Our response

Although there was broad support for the proposed carve-out we have concluded that it will not be possible to include a competition law carve-out for Great British Railways operators. Following the concerns raised within the responses we carried out some work to further develop the proposals for legislative changes. The below section sets out at a high level what we found in each of these areas - this has led us to believe that inclusion of a legislative carve-out will not achieve the desired outcome.

## Safeguards

The Office of Rail and Road's role in regulating the proposed competition law carve out (as the rail specific competition regulator) has been identified as a key factor in preserving the integrity of the rail market and ensuring that train operating companies could have confidence in the proposal. The Department for Transport has been working with the Office of Rail and Road in particular to determine how the role of the Office of Rail and Road could provide appropriate safeguards to reassure both themselves as the competition regulator and industry that the carve out was not inappropriately distorting competition. Following this work, we believe that the safeguards needed to ensure an appropriate level of oversight so as not to create unintended consequences to competition could make the provisions onerous and unworkable in practice.

In the months following our public consultation we explored the level of specificity of direction that would be required to ensure that operators could not misinterpret and act beyond what was required and appropriate, and also to provide an appropriate level of reassurance to operators when complying with any future requirement from Great British Railways to share information. We believe a significant challenge would remain in Great British Railways being able to provide an appropriate level of specificity in directions.

## Commercial and open data

We recognise the concerns raised by respondents about sharing commercially sensitive information. By not seeking to include a carve out in legislation, competition law restrictions that limit the extent to which train operating companies are able to collaborate and share commercially sensitive data will continue to apply.

Notwithstanding competition law restrictions, train operating companies are, in today's market, able to collaborate on a range of cross-industry issues that do not involve the exchange of commercially sensitive data.

The Department for Transport will continue to explore non-legislative ways to encourage train operating companies' collaboration, including Passenger Service Contract provisions, building on existing cross-industry collaboration and use of open data. Information on our plans for open data can be found under question 22.

## Contract use

Historically, even with the levers in contracts, operators have been cautious about any collaboration or information sharing that could give rise to potential concerns under competition law. When we initially consulted it was our belief that it could be possible to include a competition law carve out that would allow a wider range of collaboration than has been possible in the past. However, given the challenges we now think we would face with the competition law carve out, we propose to focus on encouraging collaboration as far as possible through the use of Great British Railways future contractual provisions and other non-legislative means.

## Conclusion

There was broad support for the policy intention behind the proposed legislation. Specific points raised during consultation, which we have explored since consulting, have however highlighted delivery challenges that would mean in practice it would likely have proven difficult for Great British Railways to use the proposed powers in the range of circumstances and at the speed initially envisaged. Benefits may therefore be limited, and we will not be proceeding with the proposed legislative changes. Instead, we will be focussing on non-legislative means to maximise the benefits of cooperation where appropriate alongside the benefits of private sector competition for passengers, taxpayers and freight users.

## Question 12 - Fares and Ticketing: Fair Treatment for Independent Retailers

### Proposals

The Plan for Rail and consultation set out the intention to revolutionise the way passengers buy and pay for rail travel, explaining that Great British Railways would be responsible for the customer offer.

Both the Plan for Rail and the consultation emphasised the importance of independent retailers competing in the ticket retail market, particularly where they grow new markets, offer greater choice to passengers, and encourage innovation. They indicated that Great British Railways would seek to reduce barriers to entry in the independent retailing market and consolidate existing Department for Transport franchised train operator websites into one centrally-held customer offer.

The Plan for Rail also stated that Great British Railways would deliver cost efficiency in retailing and unlock economies of scale whilst providing a clear offer to passengers.

### We therefore asked:

**How should we ensure that Great British Railways is able to fulfil its accountability for the customer offer while also giving independent retailers confidence they will be treated fairly?**

### What you told us

#### The customer offer

Respondents sought comfort that the customer offer would be improved and not scaled down as a result of reform. For instance, respondents suggested that customers should continue to be able to buy tickets without a booking fee, and the move to digital should not disadvantage passengers who cannot, or who do not wish to use online or digital devices.

#### Independent retailers and the Level Playing Field

Respondents stressed the importance of independent retailers to the market in their role as innovators, and showed general agreement that barriers to entry within the market should be lowered, to make it easier for new entrants and to support greater competition.

Some respondents expressed support for a future Great British Railways that could retail rail products via a new website and app, replacing the current array of Department for Transport contracted train operator sites. However, there were also concerns raised regarding how this might affect the rest of the market, specifically independent retailers.

Many responses highlighted the need for separation between Great British Railways, as a guiding mind and retail licensor, and any future retailing arm. It was suggested that if a

Great British Railways retailing arm were to be established, it would need to be a separate legal and financial entity from Great British Railways' licensing functions. Distinct governance and decision-making entities would be essential: to ensure Great British Railways could not unduly favour any future Great British Railways retailer and to avoid cross-subsidy. Several stakeholders requested further detail or consultation on the specific measures to be taken if a Great British Railways retail arm were to be established.

There was emphasis on ensuring a level playing field for independent retailers, including any potential Great British Railways online retail business. There were varying views on how this should be achieved, with some suggesting that the Office of Rail and Road should play a more proactive role in regulating retail. Others proposed that specific provisions should be included in primary legislation to place a legal duty on Great British Railways to ensure a level playing field for online retailers.

A common theme concerned the retail of potentially commercially unattractive products, such as seat or bicycle reservations, which nonetheless need to be retailed. There were different opinions on whether retailers should all be required to sell these products or only have the right (but not a duty) to do so. Some respondents also raised concerns about gaining access to all rail products including pay-as-you-go schemes.

## **Modernisation and simplification**

There was general agreement that the modernisation and simplification of ticketing, fares and retailing would be beneficial for the future of rail. This was considered important for the retail market to remain healthy and competitive and to attract passengers to the railways. There was general support for the proposed measure to consolidate Department for Transport contracted train operator websites into one customer offer and legitimate concerns raised surrounding Great British Railways' potential role as both retail licensor and retailer.

The consultation set out aspirations for the expansion of smart ticketing that integrates national rail into other modes of travel, allowing and encouraging end-to-end, cross modal journeys. To this point, some respondents flagged a desire for Great British Railways to work with devolved administrations, open access operators and other local partners to improve multi-modal offerings.

Data sharing was frequently raised in relation to rail retailing, both as core tool for innovation and as a way of lowering barriers to market entry. Linked to the level playing field, the feeling was that such data should be shared on a fair and equal basis. For instance, it was suggested that potential new market entrants should be able to easily access journey planning data. Open data is further discussed under question 22.

## **Our response**

### **The customer offer, independent retailers, and the level playing field**

We intend that Great British Railways' governance framework will set out Great British Railways' role in overseeing the specification of the customer offer and managing decision-making about retail strategy, including retail licensing. The proposed Great British

Railways licence, which would be subject to public consultation, should set out duties, functions, and behaviours in respect of railway management and delivery. We envisage this would include requirements on Great British Railways in relation to the customer offer, which could include how Great British Railways will engage with retailers. We also intend Great British Railways to work with local transport authorities to modernise and simplify fares and ticketing and to develop a clear and coherent customer offer.

We do not intend to pursue plans to deliver a centralised Great British Railways rail ticket retailer. We agree that independent retailers add significant value and innovation to the retail marketplace, and Great British Railways should seek to lower barriers to market entry and further encourage competition where possible in future. This could include changes to systems to make it easier for new retailers to enter the market. Train operators will continue to retail to passengers alongside existing third-party retailers, as today, while measures are developed to spur further competition in the online rail ticket retail market.

Our intention is that Great British Railways' governance framework will be structured to ensure that Great British Railways acts fairly when overseeing the specification of the customer offer and managing decision-making about retail strategy, including retail licensing. This, together with existing competition law, enforced by the Office of Rail and Road and the Competition and Markets Authority, will help ensure a high degree of legal protection for independent retailers.

The intended core functions and duties of Great British Railways are further discussed under question 1.

## **Modernisation and simplification**

The government is in full agreement with responses which emphasised the need for modernisation and simplification in many aspects of retailing. This includes expanding the use of digital and contactless ticketing, and a commitment to open data (further detail on this point is contained in the answer to question 22). This will unlock economies of scale and provide a coherent and attractive customer offer. Our intention is that modernisation will form an important part of Great British Railways' mission and will be vital for lowering barriers to market entry.

## Question 13 - Great British Railways Governance and Accountability

### Proposals

In the consultation we proposed to create a new governance framework to enable clear lines of accountability and to clarify roles and responsibilities of organisations across the rail sector. We set out that the governance framework will be underpinned by a number of strong, effective levers to enable Great British Railways to fulfil its purpose, whilst also ensuring appropriate accountability. Key elements of the governance framework include:

#### Statute

This is a combination of new and existing legislation to enshrine essential requirements for the establishment and functioning of Great British Railways.

#### Great British Railways licence

This will be consulted on and issued by the Secretary of State. It will be focused on enduring duties, activities and behaviours in respect of railway management and delivery.

#### Business planning and funding process

This is a requirement in legislation for Great British Railways to produce and publish a 5-year integrated business plan, setting out planned activity across track and train.

#### Directions and Guidance

These will allow the Secretary of State to set additional requirements where a more direct or bilateral relationship between the Secretary of State and Great British Railways is considered appropriate.

**We asked whether the proposed governance framework gives Great British Railways the ability to act as a guiding mind for the railways, while also ensuring appropriate accountability, and invited you to provide an explanation for your view.**

### What you told us

#### Governance mechanisms

Of those that responded, many responded positively towards the proposed framework. A few respondents felt that there was not sufficient detail on the framework's mechanisms at this stage to be able to provide a view about the mechanisms' appropriateness. Respondents emphasised the need for clear accountabilities. Detailed responses about the interaction between the bodies are discussed in question 1.

## Corporate governance

Respondents requested clarity about the process of developing the framework agreement and the articles of association, the timescale and whether they are going to be consulted on. They provided their views about Great British Railways' Board, favouring a diverse board to allow it to act as a guiding mind, while others recommended the appointment of a freight director to the board to ensure fair treatment for the freight industry. A few mentioned that the Secretary of State should only have responsibility for the appointment of the chair and were concerned that the Secretary of State would have too much power in appointing Great British Railways' Board and determining staff remuneration. It was also suggested that there should be regional representation on the board.

## Directions and Guidance

Some respondents voiced concerns that directions and guidance would be used as a vehicle by the Secretary of State to intervene in Great British Railways' operational matters, undermining its ability to act as a guiding mind. A few respondents recommended that clear mechanisms should be set out, preferably in legislation, to limit the circumstances in which directions and guidance could be used, such as in emergencies or when major shifts of government policy occur, for example due to a change in government. They suggested this would avoid micro-management. Some also suggested that the use of these powers be subject to consultation. The regulator, the Office of Rail and Road, agreed that when any directions impact Great British Railways' activities falling within the regulator's remit, there should be a requirement for the Office of Rail and Road to issue a factual statement highlighting the potential consequences.

## Licence

Respondents were supportive of the licence as a governance mechanism and agreed that it was important to consult on the licence. There were suggestions that consultation should include designated statutory consultees, for example, regional rail bodies, sub-national transport bodies and all funders of the rail network, among others.

Some respondents commented on the process for the future licence modification procedure. Notably, respondents provided a mixed view on our intention to remove the ability for the Competition and Markets Authority to modify the Great British Railways licence. There was a proposal that Secretary of State modifications to the Great British Railways licence should be subject to the Office of Rail and Road agreement. A couple of respondents also expressed a desire for further clarity on licence enforcement in the devolved administrations and within the governance framework.

## Statute

There were concerns that the proposed changes to legislation would lead to different rules applying to Great British Railways compared to other infrastructure managers potentially resulting in inconsistent approaches to access across the network. It was recommended that Great British Railways and other infrastructure managers work to the same access regulations.

## Business planning and funding process

Stakeholders commented on the different approach to funding infrastructure and passenger services, proposing that the funding arrangements be more aligned so Great British Railways could truly act as a guiding mind and adopt a whole-system approach, minimising fragmentation.

## Our response

### **Governance mechanisms**

We welcome the positive response towards the proposed framework. We agree that the new structure should enable clear accountabilities, particularly between the Department for Transport and Great British Railways.

It is our intention that the Secretary of State will set the long-term priorities and funding envelope for the railway, as the Secretary of State is democratically accountable to Parliament. The Secretary of State will set the strategic priorities and vision for rail through the long-term planning process, the business planning process as well as via other mechanisms such as directions and guidance. Great British Railways will develop and implement the operational strategy including drafting the Long Term Strategy for Rail, set the central objectives and standards and coordinate planning, network and operation of the railways across both track and train. Great British Railways, as franchising authority, will also be responsible for the specification, procurement and in-life management of the contracted train services, in place of the Secretary of State.

When designing the Great British Railways governance regime, the Department for Transport will consider ways to ensure that Great British Railways is able to collaborate effectively with key stakeholders, including local authorities, key customers and Great British Railways' contractual parties, when working to implement its operational strategy. The Secretary of State, as the sole shareholder of Great British Railways, will have the ultimate responsibility of holding Great British Railways to account through the governance mechanisms set out below.

## Corporate governance

A framework agreement and articles of association will be developed and be in place in time for Great British Railways' stand up. Government routinely uses framework agreements and articles of association to set out the purpose and agreed ways of working between bodies. As these are procedural documents that seek to capture and codify processes agreed through broader policy discussions we do not routinely consult on the detail. The framework agreement and articles of association will be published.

The Secretary of State will appoint the Great British Railways chair, have the right to approve the appointment of the Chief Executive Officer (CEO) (taken forward through a chair-led process), and have influence over senior appointments and pay matters and will regularly meet with the chair and senior executives to discuss a wide range of matters. However, it is not anticipated that the Secretary of State will dictate how the CEO's senior

executive team should be set up. The Secretary of State will seek to ensure that Great British Railways has operational independence, including that the CEO should have the operational independence to design their senior team to deliver on the government's priorities for rail. It is currently anticipated that, as with Network Rail, the Secretary of State will have a formal consultative role in non-executive appointments to Great British Railways' Board and will be able to request that particular skills or experience are sought during non-executive director recruitment. This may include freight experience if that is considered appropriate at the time. In relation to respondent feedback about a diverse Great British Railways' Board, all board appointments will be conducted in line with the governance code and the appointment of the chair is likely to be regulated by the Commissioner for Public Appointments.

### Directions and Guidance

We do not intend directions and guidance to be used to direct Great British Railways to undertake additional functions. We propose that they can only be used as a means to set out how existing functions should be carried out, when it is deemed necessary as in the cases outlined in the consultation.

We do not intend to include any further controls on the use of the power to issue directions and guidance within the legislation but directions and guidance will need to be consistent with government guidance such as Managing Public Money. The Secretary of State may choose to consult when issuing them, depending on the nature of the topic. The Office of Rail and Road already has the ability to publish a statement on any Secretary of State-issued directions and this would apply to directions issued under this new power, should they wish to do so. To ensure transparency, we intend to legislate that directions and guidance must be published when they are issued.

### Licence

Under the Railways Act 1993, we are required to publicly consult on a draft licence. We intend to retain this requirement for the Great British Railways licence. This means that all interested parties will have the opportunity to make representations on the content of the licence before it is finalised. We expect to consult on a draft version of the licence after legislation has been introduced and is progressing through Parliament. Ultimately, the new licence can only be finalised after the legislation has received Royal Assent, but must be in place for Great British Railways to start to operate.

On the procedure for future modifications of the Great British Railways licence, consistent with our aim to have clear lines of accountability, we will amend the legislation to remove the ability of the Competition and Markets Authority to amend the Great British Railways licence on referral from the Office of Rail and Road. They will retain the ability to amend other licences on referral. As the Secretary of State will be responsible for issuing the future Great British Railways licence, the Secretary of State should be able to modify the licence to address a matter in the public interest without requiring agreement from either Great British Railways or the Office of Rail and Road. However, the Secretary of State will be required to consult on any proposed modifications. The licence will apply consistently across Great Britain as the Network Rail Network licence does today and the governance framework will respect the existing roles and responsibilities of devolved administrations and their ministers.

## Statute

Legislation will continue to include appropriate conditions to ensure that access to the network is managed fairly (See questions 1 and 6). These are discussed in more detail in the responses under question 6 'Securing Better Use of the Rail Network'.

## Business planning and funding process

The approach to funding of the infrastructure manager and passenger services is discussed in more detail in the responses to question 16.

## Question 14 - Duties in Great British Railways' licence

### Proposals

In the consultation we proposed that the duties of Great British Railways would be captured in the Great British Railways licence. The Plan for Rail included a specific commitment for duties on Great British Railways to improve accessibility, promote rail freight, and to consider environmental principles in all its operations. We proposed that legislation would require these to be included in the Great British Railways licence. Question 2 also contained the proposition that Great British Railways should be under a duty to maximise social and economic value.

**We asked if you agreed with the proposal that Great British Railways' new duties would be captured in the licence and that primary legislation should require the licence to include specific duties in relation to accessibility, freight and the environment and invited you to provide an explanation for your view.**

### What you told us

Respondents offered broad support for the proposal that Great British Railways' duties should be set out in Great British Railways' licence and for the specific inclusion of duties related to accessibility, freight, and environment. Responses on the duty on maximising social and economic value are discussed under question 2.

### Framing of new Great British Railways duties

Some respondents emphasised their preference for the new duties on Great British Railways to be set out in legislation rather than the licence. Respondents also expressed interest in the detail and drafting of Great British Railways' duties. This included an emphasis on the need for each duty to be clearly defined, focused on outcomes, set at a strategic level rather than overly detailed, as well as capable of being effectively monitored and enforced. Some specific suggestions were made in relation to the duties proposed in relation to accessibility, freight and the environment.

#### Accessibility

Respondents pointed variously to the need for the duty to embrace the full range of visible and non-visible disabilities. Some respondents were of the view that the duty should extend to all protected characteristics referenced in the Equality Act 2010 (also referred to as social accessibility) and that it should involve facilitating interconnected journeys between multiple modes of transport. Respondents communicated the need for change emphasising that accessibility should be at the core of the railways.

#### Freight

Respondents pointed to the importance of Great British Railways having a clear obligation to treat freight operators fairly and support the freight industry. Some highlighted the role of

freight in supporting green growth and decarbonisation. Respondents were supportive of a freight growth target being set for Great British Railways.

## Environment

Respondents offered a range of views about the proposed environment duty. Some considered that the duty should explicitly focus on decarbonisation and net zero with respondents expressing the view that there should be a duty to decarbonise rail. There was also a view that sustainability should be emphasised. Respondents also suggested that the duty should take into account the rail industry's comparatively smaller environmental impact.

## **Requests for additional duties and other licence content**

Some respondents proposed further requirements or duties on Great British Railways. Some of these proposals were also made in response to questions 1 and 2, notably in relation to fair access to the network and in relation to multi-modal transport, private sector, adding specific proposals on the environment duty and interaction with regional transport authorities. These points have been addressed in our responses to question 2 regarding the duty on Great British Railways to maximise social and economic value and question 6 regarding fair allocation of railway capacity.

Respondents made additional suggestions which were not covered by the points raised under questions 1 and 2. These included an obligation for Great British Railways to increase passenger rail usage, focussing on the needs of all customers. Another suggestion was for a duty on Great British Railways to renew and enhance the railway network. Further suggestions were to include a commitment towards interoperability including integration of the Great British Railways network with non-Great British Railways networks and requirements for Great British Railways to be a best value organisation, to grow revenues, manage costs and promote innovation.

Some respondents identified further matters to be addressed in developing the licence. Namely, that there should be a specific mechanism to ensure Great British Railways is measured on its achievements and held accountable and that the licence should focus more on Great British Railways functions than behaviours.

In addition, the question was raised how the functions of Rail Delivery Group would be included within the Great British Railways licence.

## **Our response**

We welcome the broad support for our overall proposal and confirm our intention to pursue the stated approach for the Great British Railways licence. We intend for the Secretary of State to be required by legislation to consult upon and publish the Great British Railways licence, which will include the new Great British Railways duties.

## Framing of Great British Railways duties

We believe Great British Railways must be subject to requirements in relation to accessibility, freight, environment and maximising social and economic benefit in order to drive fundamental change and achieve government's ambition for rail reform (maximising social and economic benefit is discussed in question 2). These have been identified as important priorities as reinforced by the responses to the consultation. Although Network Rail currently has requirements in some of these areas, we want to ensure there is an enduring commitment so that any future version of the Great British Railways licence in years to come should contain such provisions. As such it is our intention to legislate for a duty in primary legislation on the Secretary of State to ensure the licence has conditions for accessibility, freight, environment and maximising social and economic benefit.

Some respondents indicated a preference for Great British Railways duties to be in legislation rather than the licence. We would emphasise that any requirements included within the Great British Railways licence will be binding on Great British Railways. Placing duties on Great British Railways in the licence rather than legislation will mean there is a clear and consistent route for monitoring and enforcing them. The Office of Rail and Road will be responsible for independently monitoring and enforcing Great British Railways' delivery against the Great British Railways licence and we are confident this will provide welcome assurance to wider industry.

We did not identify any new duties that were suggested as part of the consultation that we felt would be better placed in primary legislation than in the licence. As detail on the role of Great British Railways develops, we will keep under review whether any new areas emerge. We are therefore considering how the new duties on Great British Railways could be realised through relevant, clear and enduring conditions in the Great British Railways licence. Our considerations regarding possible licence conditions include the following:

### Accessibility

We want to ensure that disabled people are able to access railway services. We therefore recognise the need for any future Great British Railways licence conditions to be robust and capable of securing positive outcomes for disabled people, acknowledging that not all disability is visible. We will build on the knowledge and networks available through the Disabled Persons Transport Advisory Committee in preparing the draft licence for consultation (referenced in questions 20 and 21).

### Freight

Please see the answer to question 1, which reflects that it is absolutely not our intention to prioritise passenger interests over freight in the primary legislation, given that we recognise the vital importance of freight and the substantial contribution that rail freight makes to customers, industry and green growth. We want to actively support its growth and development. We are unlocking the potential for green growth that rail freight can offer by setting a long-term rail freight growth target (announced on 20 December 2023), with a dedicated Strategic Freight Unit as the guiding mind providing leadership, acting as the single point of contact for freight operators and customers and ensuring freight's place is strengthened on the network. The Secretary of State will be under a duty to include a licence condition or conditions regarding freight, and we are considering how to frame a future Great British Railways licence that promotes the growth of rail freight.

## Environment (including decarbonisation)

We believe the environment duty must be centred around the consideration of a broader set of environmental principles that guide Great British Railways decision-making, rather than a specific target or commitment such as net zero. The intention is to address the breadth of environmental impacts of the rail industry and harness the potential for the development of more sustainable railways, thereby leading to better environmental outcomes overall.

In relation to respondents' views about decarbonisation, the government has committed in the Transport Decarbonisation Plan to deliver a net zero rail network by 2050, with sustained carbon reductions in rail along the way. The ambition is to remove all diesel-only trains (passenger and freight) from the network by 2040. In line with the Strategic Objectives that will be agreed in the Long Term Strategy for Rail, Great British Railways will set out options for the decarbonisation of the rail network to meet the government's commitment to a net-zero society.

## **Requests for additional duties and other licence content**

We note respondents' various suggestions regarding additional new duties and other potential content for the licence.

As set out above, our purpose in providing in legislation that the Secretary of State must include conditions relating to certain subject matters in the Great British Railways licence, is to ensure that long-term fundamental changes are driven across the rail sector in relation to these areas. This does not, however, preclude the Secretary of State incorporating other duties, functions or behaviours in the future Great British Railways licence. We are continuing to consider points raised by respondents to assess whether and, if so, how these may be included as licence conditions.

As part of ongoing policy development, we are also reviewing the existing Network Rail Network licence to determine which elements may be applicable to the future Great British Railways licence. We are, however, also mindful that Great British Railways will have different roles and responsibilities compared with Network Rail today. We are therefore considering the best way to ensure the Great British Railways licence appropriately reflects Great British Railways' role as a single guiding mind for the railways.

In relation to respondents' concerns about addressing the needs of all customers and increasing passenger rail use, we are considering the extent to which the licence should set out requirements for these areas. In considering Great British Railways' responsibilities to renew and enhance the railway network, we will learn lessons from the way in which the network management duty is framed in the existing Network Rail Network licence.

We agree with respondents who emphasised the importance of interoperability between the Great British Railways network and non-Great British Railways networks. Enabling interoperability will require more than could be achieved through a licence alone.

As a public sector organisation, Great British Railways will automatically be required to follow government guidance and best practice on achieving best value, to grow revenues, manage costs and promote innovation and will be subject to scrutiny, including by the

National Audit Office. Detailed procedures may be set out in governance documents other than the licence.

We agree with the view of respondents that it is important Great British Railways is measured on its achievements and held accountable. As question 13 sets out, there is a developing governance and accountability framework for Great British Railways, of which the licence is a part. In judging the balance in the licence between functions, duties and behaviours, we are mindful that the licence should set out clearly what Great British Railways must do. In response to the query about Rail Delivery Group functions, it remains our intention that Rail Delivery Group's functions and cross-industry services will be integrated into Great British Railways. As plans for integration develop, we will consider what is the appropriate mechanism for realising this change. We will modify the licence as required.

We expect to consult on a draft version of the licence after legislation has been introduced and is progressing through Parliament. Ultimately, the new licence can only be finalised after the legislation has received Royal Assent, but must be in place for Great British Railways to start to operate.

The consultation will provide stakeholders a further opportunity to feedback on the content of the licence. In the meantime, we are considering the optimal way to engage with stakeholders in advance of consultation.

## Question 15 - Great British Railways Exemption from Financial Penalty for Breach of Licence

### Proposals

The consultation set out that the Office of Rail and Road will monitor Great British Railways' compliance with its licence. The consultation sought views on removing the Office of Rail and Road's power to fine Great British Railways for licence breach as the Office of Rail and Road will continue to have a strong suite of enforcement powers to take action where necessary. As an independent regulator, the Office of Rail and Road will define its own approach in line with best practice and will review current practices to ensure they are fit for purpose in the new industry structure.

The consultation explained that Great British Railways will be a publicly-owned body and therefore the Office of Rail and Road does not require the same toolkit as for the regulation of a private sector monopoly. Great British Railways will ultimately be accountable to the Secretary of State for performance against its Secretary of State-issued licence. The Secretary of State will hold non-legislative powers to sanction Great British Railways where necessary, by exercising corporate and funding controls, including powers to appoint the chair of the Great British Railways' Board. The Secretary of State may also take into account Great British Railways' performance against its licence when considering performance-related pay recommendations for Great British Railways' executive directors. The Secretary of State will continue to issue guidance which the Office of Rail and Road must have regard to when exercising its Railways Act functions. The Office of Rail and Road will continue to act as the independent decision maker on whether Great British Railways has breached, or is at risk of breaching, its licence conditions.

As well as the Secretary of State's non-legislative powers, the consultation said that the Office of Rail and Road will continue to hold a strong suite of other legislative enforcement powers to hold Great British Railways accountable to its licence, which include provisional orders; enforcement orders; and financial penalties on access-related matters. These provisions will continue to provide a strong reputational and managerial incentive for Great British Railways to address any concerns before a breach is declared and enforcement action is taken. We believe that the governance framework proposed is sufficient to effectively hold Great British Railways to account.

**We therefore asked for views on whether consultees:**

**Supported the proposal to amend the Office of Rail and Road's powers to exclude the ability to impose a financial penalty on Great British Railways for licence breach?**

### What you told us

Most respondents did not provide an answer on the proposal to amend the Office of Rail and Road's powers to exempt Great British Railways from financial penalty in the event of a licence breach. Those who did respond were more likely to oppose than support this proposal.

Points raised included:

### **The provision of an effective regulatory toolkit**

Some respondents supported the proposed repealing and agreed with the rationale that there is little benefit in one public sector body fining another. Some commented that it would be better to focus on incentivising good performance and effective enforcement orders.

The Office of Rail and Road consider that the consultation proposals as a whole contain sufficient powers for the Office of Rail and Road to hold Great British Railways to account effectively. While the ability to impose fines on licence holders is an important element of their regulatory toolkit and can provide a strong incentive for good behaviour and to prevent breaches, the Office of Rail and Road recognise that Great British Railways will be a publicly owned and funded body, ultimately controlled by the Department for Transport as part of a wider governance framework.

Amongst respondents who opposed the repealing of this power, some cited the need for the Office of Rail and Road to have a full suite of accountability levers, pointing out that financial penalties exist for a purpose and no infrastructure manager should be exempt from financial penalty.

Some respondents raised concerns that the proposal to amend the Office of Rail and Road's powers to exclude the ability to impose a financial penalty on Great British Railways would create a weaker regulatory environment and erode the certainty offered to third parties and that this could lead to a loss of confidence in both the Office of Rail and Road and Great British Railways.

### **Approach to other infrastructure managers and the access framework**

Some respondents believe that the risk of being fined for poor delivery acts as an incentive and questioned why the Office of Rail and Road will retain the power to fine Great British Railways in the circumstances where Great British Railways disregards a decision made by the Office of Rail and Road relating to access or charging. Some felt that it would be unfair that smaller infrastructure managers could still be fined but this sanction could not be applied to Great British Railways.

### **Alternative approaches to issuing financial penalties**

Some respondents stated that the existing financial penalty system does not provide an effective lever for incentivising benefits to farepayers or taxpayers. These respondents would like to see financial penalties diverted to improve passenger facing elements of the system - such as creating an improvement fund or requiring Great British Railways to invest in those areas where it has or is breaching its licence.

## Our response

### The provision of an effective regulatory toolkit

The government agrees with respondents that, under the intended new model, it would be vital for the Office of Rail and Road to have sufficient powers to effectively hold Great British Railways to account against the requirements in its licence. We maintain the position that the Office of Rail and Road's ability to levy a financial penalty (if Great British Railways has breached or is breaching a condition of its licence) is not instrumental to the regulator's ability to effectively hold Great British Railways to account, especially when combined with the powers held by the Secretary of State that will re-enforce those of the regulator.

However, we also note that the ability to impose fines can be an important lever to encourage good performance. It is our intention for the Office of Rail and Road to have a strong toolkit with which to hold Great British Railways to account. It will continue to be able to issue enforcement orders and compel Great British Railways to act. The Office of Rail and Road will be able to require Great British Railways to address present or likely future licence breaches (for example, determining the development of improvement plans or the establishment of a recovery board) and set timescales around this through the use of an enforcement order. Under the existing legislative framework, the Office of Rail and Road has discretion as to how prescriptive it chooses to be when issuing such an order, and we will seek to retain that flexibility. We also intend for the Office of Rail and Road to retain the ability to issue provisional orders if there is an urgent need for Great British Railways to take action.

In future, our intention is for Great British Railways to be ultimately accountable to the Secretary of State. The Secretary of State will hold powers to sanction Great British Railways, including through the appointment of the chair, agreeing the framework for pay (including any performance-related pay).

The Office of Rail and Road will continue to act as the independent decision maker on whether Great British Railways has breached, is breaching, or is at risk of breaching its licence conditions. As the enforcer of licences, the Office of Rail and Road has legislative powers which will enable the regulator to hold Great British Railways to account to address a current or likely future licence breach. The use of these legislative powers, and effective ways of working with Great British Railways, will continue to provide a strong reputational and managerial incentive for Great British Railways to make every effort to meet its licence conditions. However, given the importance that the Office of Rail and Road has the right toolkit in holding Great British Railways to account, we are not minded to exempt Great British Railways from the Office of Rail and Road's ability to impose financial penalties for a breach of the licence, but will keep this decision under review as the legislation is finalised.

### Approach to other infrastructure managers and the access framework

The Office of Rail and Road will continue to be able to fine Great British Railways under regulation 38 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 for failure to comply with a relevant direction, notice or

decision including relevant access related directions given by the Office of Rail and Road under sections 17 or 22A of the Railways Act 1993. The Office of Rail and Road will retain this power to ensure compliance with access directions as the Office of Rail and Road will continue to have regulatory oversight of the access framework. By seeking to retain this power, we hope to provide comfort to third parties that their rights under the access regime will be respected.

There will be no change in the Office of Rail and Road's ability to fine other licence holders (including Great British Railways' contracted train operators) for breaches of their licences.

### **Alternative approaches to issuing financial penalties.**

The department considered the suggestion from some respondents that the Office of Rail and Road should not lose its ability to fine Great British Railways for licence breach but that this power could be recast as an ability for the Office of Rail and Road to direct Great British Railways to materially invest in the areas it is in breach of.

We do not believe that the Office of Rail and Road would be able to issue an order directing Great British Railways to create a fund, make investments, or establish some form of financial reparation. This is on the basis that it is unlikely to meet the Railways Act 1993, section 55 requirement that expects a definite link between the established breach and what we order Great British Railways to do to remedy the breach – and it may be complex for the Office of Rail and Road to define any specific amount Great British Railways should spend. Instead, the Office of Rail and Road would continue to employ its existing enforcement and provisional order powers, as noted above.

## Question 16 - Business Planning and Funding

### Proposals

In the consultation we proposed that Great British Railways will create 5-year business plans covering its activity across track and train, setting out how it will best deliver for railway users. These integrated business plans will be aligned with the Long Term Strategy for Rail, which outlines government's priorities for the railways in the long-term. They will be produced and signed-off alongside future periodic review processes, reflecting the High-Level Output Specifications and the Statements of Funds Available for infrastructure issued by the Secretary of State and Scottish ministers.

The periodic review is a process run by the Office of Rail and Road, in which the Secretary of State for Transport and Scottish ministers each set out their high-level priorities for railway infrastructure outputs (the High-Level Output Specifications) and the level of funding available to carry these out (the Statements of Funds Available). The Office of Rail and Road then review Network Rail's, in future Great British Railways', business plans and issue a formal determination on the overall funding and outputs to be delivered in the next control period. These determinations are undertaken separately for England and Wales, and for Scotland. Great British Railways' plans will integrate infrastructure planning with their activities across passenger services, and ensure infrastructure is planned with customer and commercial outcomes in mind. The plans will be updated at future spending reviews to reflect the latest passenger services plans. The creation of integrated plans helps fulfil Great British Railways' role as a 'guiding mind' and provide clarity on the direction of the railways to the sector.

We also proposed that government will continue to provide 5-year funding settlements for infrastructure, agreed as part of the periodic review process, while funding for passenger services and enhancement activities will be set separately through spending reviews, as they are today. Great British Railways will be required to produce the agreed 5-year integrated business plan through legislation and will be held to account for delivery through a combination of governance mechanisms such as Great British Railways' licence and framework agreement. Changes to the business plan will be managed 'in-life', following a change control process, allowing Great British Railways to respond to changing circumstances. The integrated Business Plan will be reviewed and updated from time to time and any revised plan will be required to be published. Revised plans are likely to be published following major events, such as spending reviews.

We proposed that the Office of Rail and Road retains an important role in providing independent scrutiny of the development and monitoring the delivery of Great British Railways' 5-year integrated business plan. This is aligned to the regulator's role in setting the final determination under the periodic review and in enforcing the Great British Railways' licence. It will also provide advice to funders on matters such as efficiency and deliverability.

**We therefore asked for feedback on the proposed business planning arrangements for Great British Railways.**

## What you told us

From those who responded, there was broad support for integrated planning, the continuation of current infrastructure funding arrangements, and the 5-year planning cycle. Several unifying concerns and points of feedback within the responses were noted, with the following points raised from those who commented:

### **Integrated planning with continuation of the periodic review process brings certainty**

Many responses were supportive of the decision to keep the periodic review process and the role of the Office of Rail and Road within it. In particular, the multi-year infrastructure funding certainty which comes with the periodic review was valued. The new requirement for the creation of an integrated business plan, which is expected to be undertaken in conjunction with the periodic review, was also well received in the responses, with support across all types of stakeholders. The reasons for the support were the clarity and consistency that this would bring to the planning process, as well as the requirement for integrated planning being an effective expression of Great British Railways' role as guiding mind.

### **The need for more local involvement in the creation of the business plan**

A common response from local transport authorities and sub-national transport bodies was the need for Great British Railways to provide opportunities for local involvement. A range of suggestions were made in relation to local involvement, with some proposing less oversight from Great British Railways on local issues, and some asking for more collaboration on local planning. All responses made the case for more local involvement, and the ability for local transport authorities and sub-national transport bodies to directly feed into the business planning process.

### **More certainty around the long-term funding arrangements for passenger services**

Many responses expressed a need for more long-term certainty of funding for passenger services, to bring it in line with the 5-year funding arrangements for infrastructure. Suggestions included the setting of passenger services funding through a process similar to the periodic review and a guaranteed funding settlement over the period of the 5-year integrated plan. Responses to this issue came from a range of stakeholders, particularly train operating companies, rolling stock companies, and other stakeholders related to passenger services.

### **The need for a rolling planning and funding cycle, alongside a planning period of more than 5 years for the integrated business plan**

There were various responses which suggested that the 5-year planning period was not long enough for the rail industry. This was suggested for both infrastructure and passenger services planning. Alongside this suggestion was the request for rolling planning rather than distinct 5-year planning periods. This was usually defined as having a business plan which is under continuous creation and development, with fixed time goals for the delivery

of individual projects. This was suggested to alleviate the workload issues which the railways currently face, with intense periods of work followed by a 'cooling off' period rather than consistent workloads.

### **Clarification on how the 30-year strategy will inform the 5-year plans**

Responses asked for clarity on how the 30-year strategy, or Long Term Strategy for Rail, would influence the integrated plan. This was most common among responses which asked for longer timeframes for planning. Most wanted clarity on the role of the Long Term Strategy and an outline of its content.

### **The ability for the Office of Rail and Road to set different dates for each of the funders for the submission of their High-Level Output Specification and Statements of Funds Available**

The Office of Rail and Road suggested that legislation could be clarified to expressly allow the Office of Rail and Road to set different dates for the provision of the High-Level Output Specifications and the Statements of Funds Available by each of the funders (the UK and Scottish Governments) during the periodic review. This was suggested to bring legislation in line with operational practice.

## **Our response**

### **The need for more local involvement in the creation of the business plan**

The Plan for Rail stated that "in England, new partnerships with Great British Railways' regional divisions will give towns, cities and regions greater control over local ticketing, services and stations". As referenced in our response at question 2, our intention is for Great British Railways to be made up of regional divisions rooted in the areas they serve, providing local accountability and ongoing engagement with local authorities.

Primary legislation is not required to establish Great British Railways' regional structure and local partnerships and therefore they were not consulted on. Rather than seeking to use legislation, we are already looking to embed local involvement as a core principle into Great British Railways' future structures and processes, with the Great British Railways Transition Team leading engagement with local areas now. We intend there to be close working relationships within each Great British Railways region, and engagement between local transport authorities, sub-national transport bodies and Great British Railways on local rail strategy. Therefore, local engagement will feed into the business planning process as an important planning input.

### **More certainty around the funding arrangements for passenger services**

We recognise the value stakeholders place on the proposed continued allocation of funding through periodic reviews for infrastructure. While we hear the concerns around allocations for passenger services, we believe that the proposed system, which would retain the current funding method for passenger services and enhancements, is

appropriate with regard to the needs of all railway funders and operators. Great British Railways will need to demonstrate financial discipline within separate budget areas, balanced by the duty requiring Great British Railways to undertake integrated planning. This enables Great British Railways to act as a 'guiding mind' across track and train, keeping fiscal responsibility, while also uniting oversight of costs and revenue which will enable Great British Railways to take a whole-system view, allowing it to make choices and decisions more effectively. It also maintains continuity of the periodic review process, which has proved to be an effective system of longer-term funding allocation for infrastructure, including critical infrastructure for railway safety and will therefore remain unchanged.

### **The need for a rolling planning and funding cycle, alongside a core planning period of more than 5 years**

We acknowledge the calls for rolling planning and a longer planning period. It will be important to balance the need for a stable planning horizon across which Great British Railways can be held to account for delivery, with the need to reflect the dynamic operational environment of the railways, which is not bound by government funding periods. The 5-year integrated business plan will be managed and updated 'in-life' and governed by a change control process, designed to give confidence to both industry and rail customers. This will enable the plan to remain responsive to the wider environment, whilst maintaining transparency and stability.

Our intention is that the Office of Rail and Road will have a role in assuring changes to the business plan. The change control process and the Office of Rail and Road's role will be codified in non-legislative instruments. The 5-year integrated business plan, which will be produced and published at the periodic review, will be informed and underpinned by the continuous internal planning that Great British Railways will undertake to plan the day-to-day operations of the business. Funding will be allocated at periodic reviews (infrastructure) and fiscal events (passenger services and enhancements) as is the case today, and plans may need to be adjusted in light of this. The integrated business plan, and therefore any internal planning activity, will also be informed by the Long Term Strategy for Rail, which will provide a longer-term outlook of the priorities for the railways. To ensure transparency, the requirement to publish the 5-year integrated business plan, and any significant update to the plan, will be set out in legislation.

### **Clarification on how the 30-year strategy will inform the 5-year plans**

We note the request for further detail on the 30-year strategy. The strategy, or Long Term Strategy for Rail, is a tool to set the priorities for Great British Railways and the sector in the long-term. It will consist of high-level priorities based on the government's strategic objectives for the railways, which will act as a guide for Great British Railways when planning priorities and activities. We intend the Long Term Strategy for Rail to be produced and maintained by Great British Railways following approval from Secretary of State and updated alongside changing priorities. The Great British Railways Transition Team, working closely with stakeholders, is continuing to develop the first version of the Strategy. The Long Term Strategy for Rail will be reflected in the 5-year integrated business plan, as it will be an integral consideration within Great British Railways' planning processes.

### **The ability for the Office of Rail and Road to set different dates for each of the funders for the provision of their High-Level Output Specification and Statements of Funds Available**

We have considered the point raised by the Office of Rail and Road and it is our intention to take forward in legislation the proposal to clarify existing provisions and expressly allow the Office of Rail and Road to be able to set different dates for each of the funders for the provision of their High-Level Output Specifications and the Statements of Funds Available. This would bring the legislation in line with current operational practice and provides greater flexibility to the Office of Rail and Road in how they conduct the periodic review.

### **Conclusion**

As most respondents were positive towards our ambitions to introduce 5-year integrated planning, we intend to legislate to require Great British Railways to prepare and publish a business plan which sets out how it will deliver its functions. The Office of Rail and Road will hold an important role in monitoring delivery of and assuring changes to the integrated business plan. We expect the details of the Office of Rail and Road's role to be set out in non-legislative instruments and governance arrangements, such as a memorandum of understanding between relevant parties.

## Question 17 - Independent Scrutiny and Challenge

### Proposals

In the consultation, we proposed that the Office of Rail and Road, as the independent safety and economic regulator for the railways in Great Britain, will continue to uphold the interests of rail users and taxpayers.

To achieve this, the Office of Rail and Road's proposed remit will be to:

- continue to regulate health and safety for the entire rail network in Great Britain;
- provide whole-sector oversight that transparently holds Great British Railways accountable against its licence and its business plan;
- continue monitoring and enforcing licences;
- continue to lead 5-yearly periodic reviews of railway funding and outputs, reflecting the needs of both the Secretary of State and Scottish ministers;
- continue to have independent regulatory oversight of the access framework including the ability to direct that access is granted and to licence operators;
- remain the competition authority for the railways, continuing to enforce competition and consumer law to ensure businesses are fair and open in dealing with customers;
- sponsor the Rail Ombudsman, for which we have proposed to legislate;
- support transparency across the sector, with broad information gathering and investigatory powers, and continuing to publish rail statistics;
- support Great British Railways to develop mature and open self-assurance processes by directly reporting on Great British Railways' delivery of objectives and publishing key information about the railways to help inform decision makers and stakeholders;
- retain all roles in relation to other networks such as High Speed 1, as well as in relation to open access operators and freight.

**We therefore asked:**

**In your view, will the proposed approach to independent scrutiny and challenge provide sufficient transparency? Will the proposed approach to independent scrutiny and challenge provide sufficient assurance that Great British Railways can be held to account?**

### What you told us

Most respondents did not answer the question on whether the proposed approach to independent scrutiny and challenge would provide sufficient transparency and assurance that Great British Railways could be held to account. Those who did respond were more likely to suggest that the proposed approach would not be sufficient for reasons given in the themes to follow. However, there were also some positive responses with respondents recognising that the proposals would provide sufficient mechanisms through which Great British Railways could be held to account.

## **Independent scrutiny**

There were a mix of responses expressing views on the Office of Rail and Road's ability to independently scrutinise Great British Railways through the mechanisms proposed in the consultation. Some respondents gave support to the proposed role for the Office of Rail and Road, noting that the vast majority of the Office of Rail and Road's functions are continuing, with some expressing the view that the Office of Rail and Road's ongoing regulatory oversight of the access framework offers some reassurance to third party operators. There was a view among some respondents that the levers at the Office of Rail and Road's disposal to scrutinise are important. However, some respondents were critical over the current funding arrangement for the Office of Rail and Road, and were concerned that it impacts the Regulator's ability to operate independently.

Respondents were keen to stress the importance of the Office of Rail and Road's independence in order to effectively hold Great British Railways to account and avoid the regulator coming under undue government influence. Some suggested that a possible option could be a role for local authorities to support this by conducting assessments of the Integrated Rail Body's performance in building effective partnerships with local transport authorities.

## **Transparency and accountability**

Respondents highlighted the importance of the Office of Rail and Road's role in providing transparency and accountability across the sector as another important tool in holding Great British Railways to account and ensuring fair access to the network. However, very few respondents raised concerns regarding transparency with many accepting the levers for oversight of Great British Railways by the Office of Rail and Road to be sufficient.

There was concern from some respondents that there were too many bodies involved in holding Great British Railways to account and that this would lead to confused accountabilities and increased bureaucracy, with some respondents concerned that the proposals will not be sufficient in holding Great British Railways to account. However, there was also particular support shown for the Office of Rail and Road's ongoing monitoring and enforcement of licences as a valuable form of holding Great British Railways to account.

## **The Office of Rail and Road's powers**

The Office of Rail and Road welcomed the proposed approach to independent scrutiny and challenge, and the Office of Rail and Road's roles within it, recognising that strong and independent regulation and oversight should occupy a central position as enablers of reform objectives. The Office of Rail and Road is confident that the proposed approach to independent scrutiny and challenge secures appropriate powers for the Office of Rail and Road to hold Great British Railways to account effectively across the business.

Some respondents commented that the Office of Rail and Road's powers need to be strengthened to provide reassurance that the Office of Rail and Road has the 'teeth' to effectively hold Great British Railways to account. To this end, some reiterated their preference for the Office of Rail and Road's power to issue a financial penalty to be

retained within the Office of Rail and Road's regulatory toolkit; these concerns were raised in conjunction with answers to question 15 in the consultation. Aside from this, there were no further specific issues raised concerning the powers in the Office of Rail and Road's proposed remit.

## Our response

### Independent scrutiny

We agree that the Office of Rail and Road must remain independent and as such that it is performing an important function in many areas of the market today. Therefore, the Office of Rail and Road will continue to hold the roles and functions that it holds today, which are underpinned by legislation. Independent funding for the Office of Rail and Road is covered under question 18 on the new statutory levy. The role of local authorities is described in the answer to question 2.

### Transparency and accountability

We agree with respondents that the Office of Rail and Road must continue to play a vital role in providing transparency and accountability across the sector. This is often cited as particularly important in ensuring fair and non-discriminatory access to the network and we intend to retain the Office of Rail and Road's existing role in providing independent regulatory oversight of the access framework and retention of its (amended) duty to promote competition to provide confidence to those seeking fair and transparent access to the network in the future.

We have noted the concerns raised that there may be too many bodies involved in holding Great British Railways to account. The Office of Rail and Road will use the regulations and published guidance to inform and guide their scope in holding Great British Railways to account in a transparent manner. The Office of Rail and Road will be able to sufficiently ensure Great British Railways is being correctly regulated and is acting in accordance with its Secretary of State issued licence.

### The Office of Rail and Road's Powers

The Office of Rail and Road will continue to hold a robust suite of powers in accordance with the Railways Act 1993 and the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016. These provisions will continue to provide a strong reputational and managerial incentive for Great British Railways to perform effectively. Please see our response to question 15 on the proposal to not apply the Office of Rail and Road's ability to issue a financial penalty against Network Rail to Great British Railways in the event of a potential or actual licence breach and for further detail on the enforcement powers the Office of Rail and Road will continue to hold.

Our intention is to legislate to further strengthen the Office of Rail and Road's ability to approve, establish or administer an ombudsman scheme and, where necessary, provide funding to the operator of such a scheme, reinforcing the Office of Rail and Road's role in relation to the Rail Ombudsman into the future. The Office of Rail and Road has

announced that it has appointed the Dispute Resolution Ombudsman as the provider of the Rail Ombudsman scheme sponsored by the Office of Rail and Road.

## Question 18 - Statutory power to levy a fee on Great British Railways

### Proposals

To support the Office of Rail and Road's independence and ensure stability of funding, the consultation proposed to give the Office of Rail and Road statutory powers in primary legislation to levy a fee on Great British Railways to cover the costs of the Office of Rail and Road's functions which are currently funded from the Network Rail licence fee, rather than these costs being directly funded by government. This is a clear statement of the Office of Rail and Road's independence from the Secretary of State.

### We therefore asked:

**If you supported the proposal to give the Office of Rail and Road a statutory power to levy a fee on Great British Railways to cover the costs of the Office of Rail and Road's functions which are currently funded through the network licence?**

### What you told us

The majority of respondents did not provide an answer on the proposal to give the Office of Rail and Road a statutory power to levy a fee on Great British Railways. Those who did were more likely to support this proposal for reasons including it ensuring the regulator's independence from government.

### Independence from government and Great British Railways

Some respondents expressed concern that the Office of Rail and Road being dependent on funding from Great British Railways may compromise the Office of Rail and Road's independence and undermine its ability to effectively scrutinise Great British Railways, noting this could reduce trust in the system. Some respondents expressed a desire to identify alternative funding sources, including the Office of Rail and Road receiving funding directly from government.

Other respondents agreed that the proposed statutory levy power would protect the regulator's independence, by ensuring the regulator is clearly independent from government, and provide a stable source of funding. The Office of Rail and Road strongly supported the proposal as a way to maintain and strengthen the regulator's independence. The Office of Rail and Road noted that the 'statutory power to levy a fee will ensure the Office of Rail and Road has stable, predictable funding, which is key for the Office of Rail and Road to plan and carry out its activities effectively and efficiently with independence'.

### Transparency and funding arrangements

Some respondents highlighted the importance of the levy power promoting transparency around funding arrangements. Some organisations requested certainty that the Office of

Rail and Road could not ask for indefinite funds from Great British Railways, with those costs impacting operators and, in turn, hindering the railways' ability to drive innovation.

## Our response

### Independence from government and Great British Railways

The Office of Rail and Road already has similar powers to raise levies to fund its safety activities, and its regulation of some other networks. Our proposed new legislative provision would provide an equivalent power for the Office of Rail and Road to raise its fees from Great British Railways for economic regulation. The proposed new statutory levy therefore adopts a robust precedent for the model and would ensure greater consistency and harmonisation in how the Office of Rail and Road operates.

The Office of Rail and Road does not consult Network Rail, or the department, on the Network Rail licence fee and will not do so in future – this is an important principle in guaranteeing regulatory independence. The Office of Rail and Road sets the fee through its annual business planning process whereby the Office of Rail and Road agrees its overall income cap with HM Treasury but chooses how to split this between safety and non-safety regulation functions.

To preserve the Office of Rail and Road's independence in the new model and assuage any concerns that government could exert undue influence over the Office of Rail and Road in the course of its duties, we intend to provide the Office of Rail and Road with the statutory powers in primary legislation to levy a fee on Great British Railways to cover the costs of the Office of Rail and Road's functions which are currently funded from the Network Rail licence fee as well those reflecting Great British Railways' increased responsibility. The legislation will allow the amount and means of payment to be set by the Office of Rail and Road, based on the amount the Office of Rail and Road reasonably expects to incur. The levy will provide the Office of Rail and Road with a legally guaranteed funding source that the regulator can rely on independently of Secretary of State. The provision of a stable, predictable funding stream will enable the Office of Rail and Road to plan and carry out its activities effectively.

As the independent regulator, the Office of Rail and Road will continue to arbitrate between different interests, including at times between governmental and private interests. Accordingly, it would be inappropriate for the Office of Rail and Road's funding to be provided directly by government, as this could undermine the Office of Rail and Road's independence, or at least perceptions thereof.

### Transparency and accountability

There will be no change in the way the value of the Office of Rail and Road's funding is determined when this power comes into effect. All that will change is the mechanism by which the Office of Rail and Road administers and levies the fee (moving from a power derived from licence, to one in statute). This approach will add further certainty to the funding arrangement, the government will not have the ability to make changes to this settlement as it could if it remained in the licence, which ensures the independence of the Office of Rail and Road.

The introduction of a new statutory levy would not affect the Office of Rail and Road's external accountability as the Office of Rail and Road remains accountable to Parliament for the proper discharge of its statutory functions and is consistent with Cabinet Office guidance and HM Treasury's Managing Public Money principles.

Other parts of rail will not be affected – the proposed statutory levy will replace the existing licence fee on Network Rail, as well as reflecting the increased responsibility that Great British Railways will hold. It does not affect any other sources of the Office of Rail and Road's funding, including its Highways funding.

## Question 19 - Transport Focus as Passenger Champion

### Proposals

The Plan for Rail committed to reforming Transport Focus' rail remit to make it the passenger champion. As passenger champion, Transport Focus will advise, monitor and help hold Great British Railways to account for delivery of its passenger commitments in addition to its role advising the Secretary of State and monitoring the rail industry to ensure it delivers for passengers. In the consultation, we set out Transport Focus' proposed responsibilities under 4 themes:

- passenger advocacy
- strategy development
- monitoring
- passenger watchdog

In the consultation we proposed to amend section 76 of the Railways Act 1993 to ensure that the duty for Transport Focus to investigate will apply to all matters that affect passenger experience – and to enable them to make representations to the organisations providing services to passengers in the future – including Great British Railways. We confirmed that the role and scope of London TravelWatch would not be subject to change.

**We asked whether the proposed changes enable Transport Focus to effectively undertake the role of independent passenger champion in the new rail industry structure.**

### What you told us

#### Independence and funding

Respondents agreed that amending section 76 of the Railways Act 1993 would be an effective method to achieve the government's aim.

Some respondents said that there should be more clarity on how Transport Focus would act independently due to its reliance on funding from the Department for Transport for its operation which could potentially compromise its ability to make comments and recommendations. Some respondents noted that Transport Focus would require sufficient funding and the necessary resources to fulfil its new proposed responsibilities.

#### Relationship with Office of Rail and Road and the Rail Ombudsman

Some respondents proposed that Transport Focus should report to the Office of Rail and Road, and suggested a duty for Transport Focus to provide the Office of Rail and Road with evidence to inform how it holds Great British Railways to account for customer performance.

Some respondents sought clarity on the complaints handling process, particularly with regard to the separate roles of Transport Focus and the Rail Ombudsman, flagging the risk that the process could become too complicated.

## **Accessibility**

Respondents were concerned that Transport Focus is not an organisation with dedicated expertise in accessibility. It was suggested that accessibility functions need to be a core priority for Transport Focus rather than simply an additional role.

## **National, regional and local issues**

Some respondents raised the concern that as a national organisation, Transport Focus might not provide adequate representation regarding regional issues. Therefore, there was support from respondents for Transport Focus to work with local devolved authorities on understanding passenger experience across rail and the wider transport network at a regional level.

Respondents stated that Transport Focus should use Welsh alongside English in communications concerning Wales.

## **Our response**

### **Independence and funding**

It is our intention that Transport Focus will represent the passenger perspective in holding Great British Railways to account in its role as passenger champion. Transport Focus has a statutory duty to investigate any matter which relates to rail passengers. The published framework agreement between the department and Transport Focus sets out the terms under which Transport Focus operates as a public body sponsored by the Department for Transport – this is updated periodically and we will look to amend it to reflect the planned reforms.

The current framework agreement states that it is the Transport Focus Board's responsibility to establish and take forward the organisation's strategic aims and objectives. There is an expectation set out within the framework agreement that Transport Focus will make an impact by placing transport users at the heart of industry decision-making, challenging where passenger and user interests are not being taken fully into account, including challenging government.

The department has indicated that it will consider providing additional funding if Transport Focus demonstrates the need for further resources in order to fulfil its new remit. In undertaking the passenger champion role, Transport Focus will also be independent from Great British Railways as it will not be reliant on it for funding.

## **Relationship with the Office of Rail and Road and the Rail Ombudsman**

Transport Focus will remain an independent consumer organisation with a statutory role to represent the interests of rail users nationally. The Office of Rail and Road is the rail regulator and sponsors the Rail Ombudsman. If Transport Focus were to report to the Office of Rail and Road, it would add an additional layer of bureaucracy which might threaten Transport Focus' independence.

With regard to passenger concerns, the Office of Rail and Road monitors train operator compliance in a number of areas such as ticketing and delay repay. Transport Focus will be the passenger champion and its work will include handling passenger complaints that are beyond the scope of the Rail Ombudsman, or investigating themes of complaints that regularly occur.

Transport Focus and the Office of Rail and Road will develop a memorandum of understanding to ensure that their ways of working together, and respective areas of responsibility, are clear. Data sharing will be part of any memorandum between Transport Focus and the Office of Rail and Road.

The proposed changes to section 76 of the Railways Act 1993 will enable Transport Focus to make representations to the organisations that will be providing services to passengers in future, including Great British Railways.

## **Accessibility**

Transport Focus champions the interest of passengers, including those with accessibility needs, across all stages of the passenger journey. Transport Focus works with the Office of Rail and Road on the continuous improvement of accessibility to the network, for example reviewing service providers' Accessible Travel Policies. Transport Focus recognises the need to seek external expertise to support its role in championing disabled passengers and may choose to bring this expertise in-house in the future.

## **National, regional and local issues**

Transport Focus is engaging regional stakeholders and its plans for taking on its future remit encompasses an enhanced stakeholder management and user engagement function that will be regionally based. Transport Focus will increase its regional oversight and will be expected to make greater use of its ability to investigate the rail industry on behalf of passengers. The department has indicated that it will consider providing additional funding if Transport Focus demonstrates the need for further resources in order to realise its intention to have enhanced regional representation.

Transport Focus is and will continue to be covered by the provisions of Welsh language legislation.

## Question 20 - Improving Accessibility on the Railways

### Proposals

The Plan for Rail sets out an ambitious vision to change the way that disability and accessibility is understood in the rail industry and to ensure that the need for passengers to access the network as easily as possible is a key part of the culture of the railways and considered in everything that Great British Railways does. We are making strides to improve accessibility on the railways and transform the experience of disabled passengers and those with additional needs. For example, we are continuing to support the Access for All (AfA) programme which has delivered accessible, step free routes at more than 230 stations since 2006 and smaller access improvements at over 1500. Around a further 70 accessible routes are at various stages of design or construction. This is in addition to accessibility improvements delivered as part of other major enhancement programmes or when the industry replaces or renews station infrastructure.

To achieve this, the Plan for Rail proposed a suite of reforms in relation to accessibility.

**We therefore asked for your views on:**

**How can we ensure that accessibility is integral to Great British Railways' decision-making and leads to cultural change in the rail industry?**

### What you told us

Overall, respondents expressed support for the proposals put forward in the Plan for Rail to improve accessibility and bring about a step-change in how the industry understands, supports and delivers for customers who need assistance.

Respondents widely welcomed the proposal to require the statutory licence issued to Great British Railways to include an accessibility duty.

We are aware that some respondents have expressed the opinion that ticket offices should remain open to provide assistance to vulnerable passengers and those with additional needs. Ticket offices were not within the scope of this consultation.

### Accessibility duty

Respondents welcomed our proposal to place an accessibility duty on Great British Railways through the licence. Greater detail on what should be included in the Great British Railways licence was sought, with respondents highlighting the importance of the language used to ensure that the new duty takes into account all disabled passengers. This includes those with other protected characteristics referenced in the Equality Act and those with both visible and non-visible disabilities.

Respondents also advocated a clearly defined monitoring process for the Great British Railways licence. They asked for greater clarification on the role of the Office of Rail and Road and Transport Focus in monitoring compliance with the duty.

Respondents said there needed to be a comprehensive definition of what accessibility means and this should reflect wider issues such as Passenger Assist performance, station and rolling stock standards and wider industry accessibility culture - not just infrastructure improvements.

Respondents raised the importance of ensuring there would be adequate funding to support the new accessibility duty and allow Great British Railways to implement commitments made in the Plan for Rail. There were also calls for a separate fund dedicated to making the railways accessible.

### **Alignment with other government strategies**

Whilst respondents welcomed the proposals put forward in the Plan for Rail, they highlighted that, to truly create cultural change, there needs to be alignment with other government strategies.

### **Staff training**

Some respondents highlighted the need for appropriate staff training on disability awareness. They also said that they believed a greater number of staff with additional needs should be employed in the rail industry, and present in its organisational structure at every level, as this would help change the way that the industry understands the needs of its disabled customers.

### **Passenger Service Contracts**

Respondents made suggestions regarding how new Passenger Service Contracts could be used to improve accessibility. For example, they said that Passenger Service Contracts could encourage pan-disability initiatives - such as Great British Railways' engagement with groups with both visible and non-visible disabilities.

## **Our response**

### **Accessibility duty**

The industry must already comply with accessibility standards whenever they install, replace, or renew station infrastructure, and train operating companies will still have requirements in their licences around Accessible Travel Policies, which the Office of Rail and Road oversee in addition to Passenger Service Contracts. Respondents supported, however, the proposal for a formal duty on Great British Railways and expressed that issues such as training and funding would be critical to ensuring that Great British Railways would have the tools to improve accessibility. In this response, we are confirming

that we intend to use a suite of approaches to embed accessibility as part of Great British Railways' role.

The department understands the critical importance of an accessibility duty within the licence, and the need for this condition to be robust to ensure compliance. Given this, we intend to take forward legislation to specify that the Great British Railways licence must include an accessibility duty. The proposed new accessibility duty will underpin cultural change, ensuring that Great British Railways puts accessibility at the core of its strategic decisions when acting as a guiding mind for the industry on accessibility. This is in addition to the Public Sector Equality Duty (PSED), which would also apply to Great British Railways. The precise format and requirements, as well as the monitoring and enforcement of this licence condition, will be developed through the design of the detailed licence, the process for which is set out in question 14.

Beyond legislation we have developed a range of other measures which will support the new duty and create cultural change, ensuring accessibility is prioritised throughout the rail industry. We have already started work to deliver these promptly to ensure disabled passengers and those with additional needs see the benefits as soon as possible.

This includes the development of a National Rail Accessibility Strategy that will be the first robust, joined-up, system-wide approach to accessibility. The Great British Railways Transition Team have been formally commissioned to develop the National Rail Accessibility Strategy alongside the Department for Transport, and we will provide more information on plans for consultation and publication in due course.

A comprehensive accessibility audit of network facilities is being delivered by the department. Data generated from the nationwide audit of 2,575 stations across Great Britain will provide greater information to improve future investment decisions, and target accessibility improvements more effectively.

These measures will also be supported by the Office of Rail and Road and Transport Focus with both organisations working closely together to secure improvements on the network.

## **Alignment with other government strategies**

Alignment with wider government strategies will be crucial in creating long-term change. As an example, the National Rail Accessibility Strategy will support and complement the Long Term Strategy for Rail. This will deliver a more coherent and consistent planned approach, making the railways more accessible for all passengers. These strategies will together set the direction for industry and Great British Railways activities in the future. Consultation on the Strategy will be separate, and stakeholder views will be integral to its development.

## **Training**

The department understands that it is crucial that true culture change comes from people, teams, and organisations across the sector. This is particularly true when it comes to improving the accessibility of the rail network. The National Rail Accessibility Strategy will

be underpinned by and built on the existing improvements in training for train operating company staff and information. It continues to build a more inclusive culture that puts the needs of passengers first, and disabled passengers will continue to play a role in helping to design and delivering staff training. The department expects Great British Railways to build on current requirements on training to front line staff and those with management responsibilities including at board level.

### **Passenger Service Contracts**

Through Passenger Service Contracts Great British Railways will ensure train operating companies play their part in delivering accessibility requirements. In line with existing contracts, train operating companies will be required by Great British Railways to consider accessibility requirements of passengers in line with the requirements of the Equality Act 2010, including when train operating companies make decisions about operations, design and service improvements. We will also consider suggestions made regarding how we can use these new contracts to improve accessibility as we develop them further.

## Question 21 - Expanding the Disabled Persons Transport Advisory Committee's Remit

### Proposals

The Disabled Persons Transport Advisory Committee (referred to as "the Committee" in this section) is a well-known and respected statutory adviser to the Department for Transport. In the consultation, we therefore proposed to expand the role of the Committee in primary legislation to become a statutory advisor to Great British Railways.

The Disabled Persons Transport Advisory Committee has ensured accessibility is prioritised in the Department for Transport and we believe that the Committee will have an equivalent, highly positive impact on Great British Railways.

**We asked whether you support the proposal to expand the Disabled Persons Transport Advisory Committee's remit to become a statutory advisor to Great British Railways, as well as to the Secretary of State, on matters relating to disability and transport.**

### What you told us

There was wide support for this proposal, the majority of respondents agreeing that the Disabled Persons Transport Advisory Committee's remit should be expanded to become a statutory advisor to Great British Railways as well as the Secretary of State regarding disability and transport.

A small minority disagreed with the proposal to expand the Committee's remit and some respondents highlighted the need to involve other disability organisations more widely.

### Consultation with disability groups and organisations

Respondents raised the need for Great British Railways to consult and engage with wider disability groups and organisations, to ensure that views and needs of all disabled passengers are considered. Suggestions include engagement with pan-accessibility groups and regional user groups.

### Clarity on the Disabled Persons Transport Advisory Committee's role

Respondents called for the Disabled Persons Transport Advisory Committee's functions in relation to the proposed expansion of the Committee's role to be more clearly outlined, and for a reporting mechanism to monitor the Committee's performance in this role. The Committee and Great British Railways should establish what these functions are, and the Committee's view on whether it can perform such functions should be sought before it is made a statutory advisor. Respondents said there also needs to be adequate funding to allow the Committee to take on this new role. Concerns were also raised about whether the Committee would remain an independent organisation if it became a statutory advisor to Great British Railways.

## Our response

### Consultation with disability groups and organisations

Ensuring that Great British Railways hears from a wide range of existing and potential customers is crucial, as this will help build a comprehensive understanding of the passenger experience allowing Great British Railways to make fully formed, evidenced-based decisions to improve the passenger offer.

It is our current intention to include a condition in the Great British Railways licence to require Great British Railways to consult with disabled passengers and those with additional needs, directly and through representative organisations. This will strengthen existing disability panels that all train operating companies currently have and add more value.

Great British Railways will be made up of regional divisions rooted in and led from the places they serve with regional divisions acting as a single point for accountability across the railways in their area. This will give local leaders greater say through collaborative partnership on matters such as accessibility.

### Clarity on the Disabled Persons Transport Advisory Committee's role

We intend to expand the Disabled Persons Transport Advisory Committee's role to become a statutory advisor to Great British Railways. This new duty will apply in addition to the Committee's existing responsibilities.

We understand the importance of ensuring the Disabled Persons Transport Advisory Committee remains independent as well as the need for clarification of the Committee's role. As we work with the Committee to develop this proposal, we will take steps to ensure that the Committee's independence is not compromised.

We will continue to work to understand how best to utilise the Disabled Persons Transport Advisory Committee's expertise and take into consideration suggestions made around the Committee's future role and responsibilities. We will agree on appropriate funding to ensure that the Committee can carry out its role as statutory advisor. The department will make arrangements to fund the Disabled Persons Transport Advisory Committee's work in this area as part of our ongoing sponsorship of the Committee.

## Question 22 - Promoting Open Data

### Proposals

As set out in the Plan for Rail, we want to ensure Great British Railways follows an ‘open by default’ approach to rail data to encourage transparency, collaboration, efficiency and innovation and bring new entrants into rail. As a public body responsible for making network-wide decisions for the railways, it is essential that Great British Railways acts transparently, for example by sharing data openly, so that others can scrutinise its decisions and performance. Additionally, we want Great British Railways to provide the private sector with opportunities to innovate on the railways by enabling easier access to sources of rail data.

The Railways Act 1993 section 145 generally restricts the disclosure of information obtained under the Act unless consent is given by the relevant individual or business. We proposed to provide an exemption to this, under section 142(2), enabling Great British Railways to make information disclosures, including distributing open data, in line with its functions and activities. Any disclosures will remain subject to other laws, for example personal data will be subject to UK General Data Protection Regulation (GDPR).

Whilst the Plan for Rail commits to “open by default” data, this does not necessarily commit to making all information publicly available where it would not be appropriate to do so. For example, there may be limited sets of data that will remain confidential to encourage ongoing competition or where there are strong commercial reasons to keep data confidential. However, our clear commitment is to supporting making data available.

### We therefore asked:

**In addition to providing Great British Railways with powers to make “permitted information disclosures”, are there any other revisions to the Railways Act 1993 or barriers to promotion of open data that you consider need to be addressed?**

### What you told us

Of those who answered this question, the majority agreed that further legal changes are necessary to ensure data is open by default, but did not provide further information on what those legal changes would be.

Of those who provided further general comments, a majority supported the proposed legislative changes, and cited several benefits such as better use of data intelligence for predictive infrastructure maintenance, transport planning and coordination, building competitive markets across the sector, developing data and digital innovative tools and technologies, and efficiency gains in the rail sector.

Despite the majority support for the legislative proposal, some respondents identified a few concerns about providing Great British Railways with powers to make permitted information disclosures. For example, some respondents called for protection of commercially sensitive information. Some respondents also raised questions on the cost implications of ‘open by default’ data on train operating companies and supply chain

businesses. In addition, some respondents were not clear on whether the proposal would enable Great British Railways to disclose information from freight operators and other operators that are not contracted by Great British Railways (for example, open access operators).

### **Uses and benefits of open data**

Some respondents argued that data is beneficial in fleet and track management through predictive interventions. For example, users can rely on data to accurately determine the location of faults along the track and help ensure a resilient and reliable 'Predict and Prevent' maintenance strategy of railway infrastructure.

Some respondents suggested that government support for investments in innovative open data tools and technology would enable Great British Railways to create value for taxpayers through more informed decisions.

Another benefit of open data cited by some respondents is that it creates opportunity for data aggregation and analysis to gain insights on rail sector performance.

Some respondents also said that open data could improve competition and efficiencies in rail for the benefit of passengers and the supply chain. The benefits cited included improved journey planning and customer journey experience, attracting new entrants into the broader rail market such as app developers and digital payment solutions.

Some respondents suggested that open data could enable a fairer and more competitive rail market. Other respondents noted that better access to information can help the sector achieve its environmental goal of reducing emissions. In this regard, some respondents called for publicly available, and quality assured environmental data.

### **Better transport planning and coordination**

Some respondents said that Great British Railways should have a specific obligation to provide open data to regional, sub-regional and combined transport authorities to support transport planning and coordination.

### **Safeguards and protections for confidential information**

While most respondents agreed to the 'Open by default' approach to data, some respondents also stressed a need for commercially sensitive (confidential) information to be protected from disclosure. It was also stated that any disclosure of commercially sensitive data would discourage innovation and further investments made by companies in the rail sector.

### **Cost implications of open data**

Some respondents stated that implementing open data requirements may lead to additional costs being incurred by train operating companies and the supply chain such as

the purchase of data software and data related intellectual property licences. Respondents felt that government should contribute to these costs.

### **Open data requirements for open access operators**

Some respondents were not clear on whether the proposed legislation to promote open data would allow Great British Railways to disclose information from open access and freight operators.

## **Our response**

### **Attract investment in innovative digital tools and data technologies**

We note that many respondents agree that open data can help attract investments in digital tools and technologies for the benefit of users and passengers in rail. Government will seek to take forward the legislative proposals outlined in the consultation to enable Great British Railways to provide open data to improve efficiency, unlock innovation, and bring new entrants (for example, app developers) into the rail market.

### **Better transport planning and coordination**

We are keen to support access to rail data for all stakeholders to help them make decisions and plan based on open data sources. The legislative proposal will provide Great British Railways with powers to make sources of rail data openly available for better transport planning and coordination. Our intention is for Great British Railways to take strategic decisions on the most appropriate data disclosures to support their functions and priorities. Therefore, no further changes beyond those proposed are required to ensure that Great British Railways can disclose information to regional, sub-regional and combined transport authorities if such disclosures are for the purpose of carrying out its functions or activities.

Pre-legislation, we are working to align new train operator contracts to the "open by default" policy by introducing open data provisions. These provisions will be anchored on the existing legislation in relation to information disclosure.

### **Safeguards and protections for confidential information**

Whilst the Plan for Rail commits to 'open by default' data, this is not a commitment to making all information publicly available, where it would not be appropriate to do so. For example, there may be limited sets of data (including, for example, data collected from open access passenger or freight operators) that will remain confidential to encourage ongoing competition or where there are strong commercial reasons to keep data confidential.

We will seek to introduce appropriate safeguards and protections for information confidentiality such as through legislation, contracts, the licence, or guidance to ensure that commercial sensitivity is properly considered before data is shared or published.

## **Cost implications of open data on train operating companies and other businesses**

The proposed legislative change will not of itself create new data obligations or expectations for operators. These would continue to be defined in contracts with operators although we are pursuing changes to the contracts ahead of the bill to deliver on the scope of open data set out in the Plan for Rail. We would expect any additional costs to be limited due to the utilisation of existing data sources. Additionally, we would expect open data to provide innovative opportunities which could support growth and improve cost efficiency.

Beyond legislation, we are also providing £5 million of funding to the Rail Delivery Group to support the development of an open data platform - the Rail Data Marketplace. The Rail Data Marketplace will be a central platform for industry and third-party open data publishers and may include chargeable data ('shared data'), for example to recover cost or for third parties to generate profit. However, we encourage organisations to provide open data free of charge wherever possible and appropriate.

## **Open data implications on operators not contracted by Great British Railways**

The proposed amendment to legislation is not intended to apply to freight operators or open access operators, but instead will apply to information obtained by Great British Railways under the Act (for example, through its role as a franchising authority). To be clear, the proposed amendment does not override either the Access Management Regulations or the Competition Act insofar as they apply to the disclosure of data. However, in seeking to expand commercial opportunities we encourage others in the rail sector to publish data openly through the Rail Data Marketplace.

## Question 23 - Ratification of the Luxembourg Protocol

### Proposals

The consultation explained that we want to introduce new powers to enable the UK to implement and subsequently ratify the Luxembourg Protocol (which the United Kingdom signed in 2016). The Protocol will establish a harmonised international legal framework for the creation and registration of international financial interests in rolling stock (which companies can use on a voluntary basis) as well as legal remedies for default and insolvency. Once implemented in the UK, it will increase the attractiveness and reduce the risk involved for UK based companies privately financing railway rolling stock across borders, further unlocking greater levels of private finance in the railways and supporting UK rail lenders to pursue business overseas.

We proposed introducing a new power in primary legislation which will enable the government to lay regulations to implement the terms of the Protocol at a later date. The consultation made clear that the government will consult on the implementation of the Protocol in detail prior to any implementation.

**We therefore asked for views on whether you support the proposal to include a power in primary legislation to enable the ratification of the Luxembourg Rail Protocol. We invited you to explain your views.**

### What you told us

The majority of respondents agreed with the proposal, and a minority disagreed. The remaining respondents did not know or did not answer the question.

Although we did not specifically ask for additional detail from respondents, many of those who were supportive provided additional information in their response or submitted additional information via email. Many of these were supportive of reducing costs in financing rolling stock, and some also cited reducing risk to creditors and simplifying the leasing process by creating an international register.

Several themes emerged from all responses received.

### Benefits of reducing costs and increasing flexibility

The majority of those that responded to this question support the proposal owing to its potential to reduce the cost of financing rolling stock which would consequently be inherited by train operating companies and freight operating companies, and further by rail users.

Several of those who responded also welcomed the idea of an international register for rolling stock, which is established by the Protocol. The international register would facilitate legal remedies for rolling stock leasing companies in the event of insolvency of companies leasing rolling stock from them and therefore reduce the risk for creditors. The international aspect would also facilitate development in pursuing business overseas.

## **Request for further assurance**

Several stakeholders are supportive of the proposal in principle but wanted further assurance before expressing outright support. Further clarity was requested on related issues such as the cost and implications of the proposal for interoperability, a further breakdown of implications specifically in the UK rail sector, and assurance that an impact assessment and Post-Implementation Review would be conducted.

## **Concern about new costs**

A small number of respondents were opposed to the ratification of the Luxembourg Rail Protocol. These stakeholders cited concern over the cost of new, additional administration required to create and maintain the international registry for financial interests in rolling stock as a result of the Protocol, both for new and existing financing arrangements.

## **Supplementary Suggestions**

Several respondents suggested supplementary measures to support an efficient rolling stock sector.

Several respondents proposed additional measures to reduce the costs of rolling stock and reduce risk to creditors which strictly go beyond the scope of the Luxembourg Rail Protocol. For example, regulation of rolling stock leasing, including the creation of a new regulator or a 'rolling stock tsar' which could provide advice and expertise on rolling stock needs across the network, facilitate the most efficient and effective use of fleet and ensure fair and reasonable charges. Another respondent proposed that Great British Railways should be able to negotiate longer contracts with rolling stock leasing companies to provide cost savings for the former and security for the latter.

Separately, a respondent proposed a framework which they deemed to present the greatest possible flexibility for Great British Railways and local partners regarding rolling stock procurement and management, including options to both lease and outright purchase rolling stock. Another respondent also supported flexibility in rolling stock procurement.

## **Our response**

Overall, of those respondents who submitted a response to the question, the majority of stakeholders agreed with the proposal in full or in principle. At this stage, the government is seeking a new power to be able to implement and ratify the Protocol at a later date and not seeking to develop the detail of the Protocol itself.

## **Benefits of reducing costs and increasing flexibility**

We welcome the fact that the majority of respondents who submitted a response to the question support the proposal and recognise the benefits of later implementing and ratifying the Luxembourg Rail Protocol for releasing finance in the rolling stock sector. The ultimate objective of the proposal is to simplify leasing processes and consequently

improve the experience for leasing companies, operating companies and rail users, as well as create new opportunities for UK businesses.

### **Concern about new costs**

We do acknowledge and have noted the small number of stakeholders who raised concerns around the Protocol and the risk of this creating additional administration and cost for both lenders and lessors. It is the government's intention to consult on the technical implementation of the Protocol in due course and will consider these concerns as part of the implementation phase, alongside a further and robust impact assessment. The impact assessment also investigates issues such as the implications of the Protocol for interoperability and on the UK rail sector specifically, which should offer assurance to those respondents who supported the Protocol in principle but requested a more detailed level of scrutiny. This will take place prior to any implementation of the Protocol.

### **Supplementary Suggestions**

On the wider proposals for the rolling stock market that go beyond the principles of the Protocol, the private sector has played an important part in providing funding for new and refurbished rolling stock, with a high level of competition, however the government continually keeps this under consideration to optimise value for money.

On the proposal to create a new regulator, it is worth noting that the Office of Rail and Road is the concurrent competition authority for rail and has powers to investigate potential infringements of competition law and to conduct market studies where it considers that a rail related market may not be working well. Secondly, there is already the ability for the operators to propose longer contracts but these are always subject to value for money considerations. Finally, we would expect operators to work in collaboration with owners to identify rolling stock requirements and make improvements where necessary to meet customer expectations.

## Questions 24 and 25 - Impact Assessments

### Proposals

We published 5 draft impact assessments alongside the consultation. These set out our analysis of the impacts and risks that key legislative changes would have, if taken forward. As part of this consultation, we sought views on the impact assessments and asked people to submit any further evidence which should be considered during their development. The evidence received across the consultation has informed work by the department to update the impact assessments. The relevant impact assessments will be published with the draft bill during pre-legislative scrutiny. The 5 draft impact assessments previously published related to proposals identified in the Plan for Rail covering:

- Great British Railways
- Passenger Champion
- Accessibility
- Data
- Environment

### We asked you:

**Are there impacts or risks of the policies proposed which have not been covered by the impact assessments? Please explain or provide evidence.**

**Do you have evidence relating to the impacts and risks identified and discussed in the impact assessments? Please provide it to us.**

### What you told us

Consultation responses included:

A few respondents said the draft impact assessments were too passenger services focused and didn't sufficiently account for the impacts on freight and non-Great British Railways operators.

A few respondents raised the impacts on the wider supply chain and suggested this be incorporated into the impact assessments, as the current private sector focus is on operators rather than other businesses. It was also pointed out that the uncertainty associated with structural reform can make it very difficult for supply chain businesses to make investment decisions and plan into the future.

Some respondents raised the risk of Great British Railways being a powerful company, pointing to accountability concerns and ensuring decisions are made in the interest of passengers.

A few respondents suggested that the wider role of rail in delivering policy objectives such as levelling up, improving regional transport, and increasing social value could be better recognised in the impact assessments. Several responses pointed out that the environmental benefits of mode shift were underrepresented, especially as regards freight.

## Our response

The responses regarding draft impact assessments have been analysed and has informed work by the department to update them. The relevant impact assessments will be published with the draft bill during pre-legislative scrutiny.

Issues related to the environment impact assessment, including decarbonisation and defining the public interest duty, are covered under question 2 of this government response.

Consultation responses regarding the previously-published passenger champion impact assessment, and specifically the ability of Transport Focus to adequately represent the passenger and ensure representation at a more local level, are addressed under question 19 of this government response.

Some general points raised in consultation responses related to the accessibility and data impact assessments are covered under questions 20 and 22 of this government response.