



# **The Williams-Shapps Plan for Rail A Consultation on Legislation to Implement Rail Transformation**

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

June 2022

Department for Transport  
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## Foreword



**The Rt Hon Grant Shapps MP**  
Secretary of State for Transport



**Wendy Morton MP**  
Minister of State for Rail

For the first time in 25 years, we have an opportunity to fundamentally reform our railways. Getting this right means we can ensure this historic industry delivers for its users, setting it on a more sustainable and secure footing. It also means delivering a stronger, more levelled up and increasingly green economy, of which the railways are a crucial part. However, over many years, it has become clear that our railways are not serving passengers, freight users nor the taxpayer well. Spiralling costs, delays to upgrades and commercial failures, including the collapse of franchises and a disastrous timetable change in May 2018, proved this. The issues were stark: too many trains were late, overcrowded or cancelled, meaning that our railways were too often failing in their duty of delivering a high-quality, reliable service for their customers. COVID-19, which exacerbated challenges to the sector's operating model, forced us to confront these long-term trends head on. It's clear that rapid change is necessary, but government cannot deliver this change alone. This consultation seeks to hear from those who use the railway, the wider public and the industry on the proposed legislative changes needed to deliver transformation of the railways.

In 2018, we commissioned Keith Williams to carry out the first root and branch review of the rail industry in a generation. More than 750 representations were made to the Williams Review and Keith and his team met with more than 200 groups up and down the country. The review was extended to ensure its conclusions were still appropriate in the context of the COVID-19 pandemic. In May 2021, we published the Williams-Shapps Plan for Rail, heralding the start of the biggest

transformation of the railways in three decades, putting passengers and freight customers first, delivering for taxpayers, and combining the best of the public and private sectors.

At the heart of the transformation of the railways is the creation of a new public body, Great British Railways, that will bring the vast majority of the network under single national leadership and end years of fragmentation. This is not re-nationalisation but, rather, simplification. The rail sector today consists of dozens of organisations, each with different motives, interests and incentives that do not always align with each other. The complexity of the railways needs to change – a guiding mind is required to bring the whole system together and provide direction. Great British Railways will own the infrastructure, receive the fare revenue, run and plan the vast majority of the network and set most fares and timetables. Network Rail, the current infrastructure owner, will be absorbed into this new organisation, as will many functions from the Rail Delivery Group and Department for Transport.

There will be a new brand, identity and culture for the whole system, built upon the iconic double arrow, with national and regional sub-identities. There will be a rollout of digital payment methods, automated compensation and new products to modernise the railways. Great British Railways will be a new organisation, not just a larger version of Network Rail, and it will spearhead a new culture of putting passengers and freight customers first. Great British Railways will also play an important role in delivering the government's commitment to unite and level up the whole of the country. It will be organised around regional divisions so that decisions are made closer to the places the railways serve, with new partnerships between Great British Railways and local government to give local leaders a greater say in how railways are run in their areas. These changes will ensure the sector works in the interests of passengers and freight customers, creating a financially sustainable railway which delivers for taxpayers – we are absolutely clear that costs must be reduced, efficiency increased and savings delivered. It is estimated that after five years the Plan for Rail will deliver an estimated £1.5 billion a year in savings, equivalent to 15% of the network's pre-pandemic fares income.

The private sector has played an integral role in improving our railways over the past 25 years. These plans are designed to take the very best of the private sector and fuse it with a single guiding mind that can drive benefits and efficiencies across the system as a whole. It will unleash new opportunities for private sector delivery in areas such as long-term asset maintenance and open up data for developers to provide new services, such as innovation in journey planning. And within its regional railways structure, Great British Railways will work with local supply chains to identify and foster new, innovative businesses and commercial partnerships and better support regional economies. A new offer for the vital rail freight sector will also provide greater opportunities for growth, helping it to maximise its economic and environmental contribution.

The complicated and broken franchising system will be replaced by new Passenger Service Contracts, designed to invigorate the competitive market and improve services. These new contracts will be based on strong incentives for private operators to run high-quality, punctual services, manage costs, attract more passengers and innovate for fair reward.

Transformation on this scale cannot happen overnight, but the journey to deliver a railway that meets the needs of passengers and freight customers is well underway.

Last year, we launched the Great British Railways Transition Team under the leadership of Andrew Haines, a respected industry leader and Chief Executive of Network Rail, and earlier this year we launched a competition to locate a national headquarters for Great British Railways outside of London - ensuring skilled jobs, investment and economic benefits are focused beyond the capital. A final decision on the location is expected in the Summer.

When we created the Transition Team, we set out eight core goals that would define Great British Railways:

- Changing the culture of the railways, not simply creating a bigger version of Network Rail
- Thinking like customers, both passengers and freight, and putting them first
- Growing the network and getting more people travelling
- Making the railways easier to use
- Simplifying the sector to do things quicker, driving down costs and being accountable
- Having a can-do, not a can't do culture
- Harnessing the best of the private sector
- Playing a critical role in the national shift to net zero

Even before Great British Railways is formally in existence, we are already starting to deliver. In June last year, we launched new flexi-season tickets to cater for our customers' changing working patterns. In August 2021, we began a national accessibility audit of all stations in Great Britain, and at the time of publication over 1000 stations have already been surveyed. In October, we announced £360m of new funding to extend London-style pay-as-you-go contactless ticketing to regional commuter networks.

In November, we unveiled transformational rail investment for the Midlands and North: the full electrification of two main lines, the upgrade of a third, three new-build high-speed lines and significant improvements for local services. That month, too, we marked the first restoration under our Restoring Your Railway manifesto commitment, with the reopening of the Dartmoor Line between Okehampton and Exeter.

In December, the Transition Team launched a call for evidence which will inform the first 30-year whole industry strategy for the railways, providing a strong basis for collaboration across the sector into the future. And this year, in April 2022, we launched the Great British Rail Sale, the nation's biggest ever rail sale cutting travel costs, with more than a million discounted tickets that will help connect friends and families, boost UK tourism and encourage green travel across the country. Alongside this, new National Rail Contracts have been replacing Emergency Recovery Measures Agreements – stepping-stones towards new Passenger Service Contracts.

And shortly, we will legislate for Great British Railways to become the guiding mind for the railways. This consultation – which will inform that legislation – is not about the principles already set out in the Williams-Shapps Plan, but about the detail lying behind some of those principles.

We are profoundly committed to our railways and to seeing them flourish into the future and deliver for customers and communities across this country. The plans outlined in this consultation will deliver a rail system that is the backbone of a cleaner, greener public transport system, offering passengers and freight customers a better deal and greater value for money for taxpayers. We are

seeking your views on these proposals ahead of introducing legislation that will support the delivery of this once in a generation transformation of our railways.



**The Rt Hon Grant Shapps MP**  
Secretary of State for Transport



**Wendy Morton MP**  
Minister of State for Rail

# Executive Summary

## The Williams-Shapps Plan for Rail

- The Williams-Shapps Plan for Rail ('Plan for Rail') heralded the start of a major transformation of Great Britain's railways (Northern Ireland operates separately), to deliver better outcomes for passengers, freight customers and taxpayers.
- At the heart of the proposals is the creation of a new public body, Great British Railways, that will bring the railway network together under single national, accountable, leadership, ending years of fragmentation. Great British Railways will be the new guiding mind for the railway, bringing together the best of the public and private sectors, integrating track and train by incorporating Network Rail, taking on responsibility from the Department for Transport for procuring and managing passenger train services, and incorporating elements of the Rail Delivery Group.
- The complicated and broken franchising system will be replaced by new Passenger Service Contracts, designed to invigorate the competitive market, improve services and create a more customer focussed railway. The plan also outlines measures to improve accessibility across the railway, to deliver a comprehensive environmental plan to help meet our net-zero carbon emissions target, reform to fares and ticketing, a new offer for rail freight, and the first ever 30 Year Strategy to ensure our railways help level up and deliver for every part of our country. These are just some of the reforms taking place under the Plan for Rail.
- The ambitious package of reforms set out in the Plan for Rail will ensure that Britain's railways become more customer focused and financially sustainable, working in the national interest as a public service.

## This Consultation

- Many of the commitments set out in the Plan for Rail do not require legislation to enact, however, legislation is required to deliver key elements of structural reform.

This consultation provides further detail on the primary legislative changes that are proposed and seeks your views on these. Your feedback is critical to ensuring this once in a generation transformation of Britain's railways delivers for passengers, taxpayers and freight customers.

- This consultation focuses on the legislative changes required to deliver Rail Transformation. Some important elements of Rail Transformation are not being consulted on here because they do not require primary legislation, including areas such as innovation, local partnerships, and the 30 Year Industry Strategy, however we will engage on the non-legislative reforms through other mechanisms.
- The first chapter of this consultation explains the current structure of the Rail Industry, while the remaining chapters provide further detail on the legislation required to deliver the transformational ambitions outlined in the Plan for Rail.

### Establishing Great British Railways

- Great British Railways will be established as a new public body with the purpose of being responsible for running the railways safely and efficiently to maximise social and economic value. A Great British Railways Licence will set out the body's duties and functions.
- Great British Railways will be responsible for procuring and delivering new Passenger Service Contracts, taking over responsibility from the Department for Transport for doing so. Changes in legislation will facilitate this.
- Legislation will amend regulations to enable Great British Railways to function as a guiding mind and introduce a power to amend EU derived rail markets legislation in the future with secondary legislation, following consultation. ORR will also be given a new duty, which they will need to consider and weigh up alongside their other duties, 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.
- To drive efficiency and innovation, and unlock benefits for customers and taxpayers, legislation will introduce measures to encourage effective collaboration and strong competition.

### Establishing the New Rail Sector

- Great British Railways will be an arms-length body of the Department for Transport, with clear separation between it and Government. A new governance and accountability framework will clarify the roles and responsibilities of key organisations across the rail sector, including Great British Railways. The

framework will be underpinned by strong and effective levers which are based on other successful customer focussed regulated sectors.

- The Office of Rail and Road will continue to have robust powers to monitor and enforce the governance framework, providing whole sector oversight and transparently holding Great British Railways and other rail organisations to account.

### **Wider Industry Reforms**

- To deliver the vision of the Plan for Rail, change is required in all parts of the rail system. Changes in legislation will deliver a new role for Transport Focus, which will become a new passenger champion, and will improve accessibility on the railways. The system will also move to an 'open by default' approach to data to support transparency and encourage innovation.

## How to respond

The consultation period began on 9 June and will run until 4 August. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at <https://www.gov.uk/dft#consultations> or you can contact [railconsultation@dft.gov.uk](mailto:railconsultation@dft.gov.uk) if you need alternative formats (Braille, audio CD, etc.).

Please send consultation responses to:

Rail Transformation Programme Consultation

Great Minster House

33 Horseferry Road

London

SW1P 4DR

[railconsultation@dft.gov.uk](mailto:railconsultation@dft.gov.uk)

You can also reply via our [Online Survey](https://www.smartsurvey.co.uk/s/L1S3JB/) (<https://www.smartsurvey.co.uk/s/L1S3JB/>).

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

If you have any suggestions of others who may wish to be involved in this process, please contact us.

## Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

## Confidentiality and Data Protection

The Department for Transport is carrying out this consultation to gather views on our approach to meet the commitments that require legislation within the Williams-Shapps Plan for Rail. This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. If your answers contain any information that allows you to be identified, Department for Transport will, under data protection law, be the Controller for this information.

As part of this consultation we are asking for your name and email address. This is in case we need to ask you follow-up questions about any of your responses. You do not have to give us this personal information. If you do provide it, we will use it only for the purpose of asking follow-up questions.

The Department for Transport's privacy policy has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer. You can view it at <https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter>.

To receive this information by telephone or post, contact us on 0300 330 3000 or write to Data Protection Officer, 3rd Floor, One Priory Square, Hastings, TN34 1EA.

Your information will be kept securely on the IT system within the Department for Transport and destroyed within 12 months after the consultation has been completed.

# 1. Introduction

## Where We Are Today

- 1.1 Britain's railways are at a critical point in their history. The remarkable renaissance of rail since privatisation brought an end to assumptions of a network in terminal decline. Instead, there are thousands of new, cleaner and greener carriages, dozens of new stations have opened, hundreds have been made more accessible and modern, and in 2019, rail travel achieved its highest share of all miles travelled in Great Britain since 1967. These are significant successes, for which the privatised railways do not get enough credit.
- 1.2 However, the model put in place at privatisation has significant weaknesses. Many costs have risen faster than inflation, with taxpayers and customers having to foot the bill<sup>1</sup>. Passenger satisfaction reached a 10-year low in 2018 as delays, cancellations and poor customer service took their toll. Some of the franchises on which the privatised system was built were failing, and many were being directly awarded to operators, rather than relying on competition. The defining message from passengers and freight customers to the Williams Rail Review, commissioned in the light of a chaotic timetable change in May 2018, was that change is urgently needed. The system that worked to re-energise the railways in the 1990s now struggles to ensure that the railways deliver for the public.
- 1.3 The COVID-19 pandemic then presented an existential challenge to the railways. Almost overnight, passenger numbers fell to levels last seen in the 1850s, reaching just 4% of previous demand in April 2020. In the future, many passengers will return – leisure travel bounced back remarkably quickly during 2021, as the freight market, which played such an important role during the pandemic, did in 2020. But rail can no longer rely so heavily on commuters packing into trains twice a day, five days a week. More passengers will have choices about where and when they travel, and the railways will have to fight harder to win their business. The sector must be set up to be adaptable, responsive, and work together effectively to deliver more affordable, simpler, better services for passengers and freight customers. It must

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<sup>1</sup> Realising the potential for rail in Great Britain, Sir Roy McNulty for the Department for Transport

relentlessly focus on cost and efficiency – delivering better value for money for taxpayers and users.

- 1.4 This government deeply believes in the future of the railways. Over the next three years alone, excluding emergency support, we will spend more than £35 billion on growing, upgrading and maintaining the network: more than in any three-year period since at least the 1960s. In the Midlands and North, through our £96 billion Integrated Rail Plan, we have made significant longer-term capital spending commitments. Railways will play a crucial role as we build back better, connecting our towns and cities and acting as a catalyst for job creation, investment and prosperity. And we have started to reverse the Beeching cuts, with a £500 million investment to reinstate local railway lines and stations. Our railways have one of the best safety records in Europe. They are already a clean, green transport system for the country, and getting more freight and passengers onto rail will be critical to meeting the government's commitments to net-zero by 2050.
- 1.5 To enable our railways to become more customer focused and financially sustainable, the government set out 62 commitments in its white paper, the Williams-Shapps Plan for Rail ('Plan for Rail'), in May 2021. These commitments will deliver Keith Williams' and the government's shared vision of how the railways must change for the better, including 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 model.
- 1.6 Much of this transformation can be delivered through non-legislative means, and the government is working intensively in partnership with the rail industry to deliver many of the improvements set out in the Plan for Rail now.
- 1.7 We introduced flexible season tickets within a month of the Plan for Rail's publication, and we continue to work with train operators to roll-out digital ticketing to make journeys easier. The first national audit of station accessibility has begun, and in November 2021 we began formal industry engagement ahead of the first competitions for the new Passenger Service Contracts. We are reviewing and removing train announcements that add unnecessary noise and disruption to journeys, and we launched the Great British Rail Sale, offering up to 50% off more than a million tickets on journeys across Britain.
- 1.8 The Great British Railways Transition Team (GBRTT) has been established under the leadership of industry leader and Network Rail Chief Executive Andrew Haines, to drive forward delivery of change ahead of the formation of Great British Railways, the new guiding mind that will join up the rail system.
- 1.9 GBRTT is focused on establishing a new customer-focused industry culture, leading revenue recovery efforts and delivering major industry-wide initiatives including the new 30-year Strategy, for which a call for evidence was issued in December 2021. GBRTT is laying the foundations for Great British Railways, including through the competition for its national headquarters, and the creation of an interim Strategic Freight Unit to work collaboratively with the sector, ensuring an immediate focus on delivery of the government's ambitions for rail freight.

- 1.10 Already we see evidence of culture change across the industry, building on best practice learnt during the pandemic. In the South West, innovative work by GWR and Network Rail saw the Dartmoor Line reopened in November 2021 to regular passenger services for the first time in half a century, two years early and £10 million under budget. Operators, Network Rail and government are working together with local and regional stakeholders to improve how services are planned and deliver more reliable, punctual services across the network, a new level of collaboration previously unseen until the pandemic.
- 1.11 Not all parts of the railway will be managed by Great British Railways. Today, other infrastructure managers provide an essential part of the rail network, ranging from international services to the Channel Tunnel through to Merseytravel services in Liverpool. The Plan for Rail was clear that there is no intention to change the status of these organisations, however we will work with the relevant infrastructure managers to help ensure that these parts fit together with the rest of the railway in a coherent way, especially in those areas that face the passenger.
- 1.12 The government looks forward to continuing to work in collaboration with partners across the rail industry to deliver the outcomes of the Plan for Rail and achieving real improvements for passengers, freight customers and taxpayers over the coming years. We will work continuously through this process with the sector and stakeholders across Great Britain to understand their views whilst implementing these major changes.

## Consultation Process

- 1.13 Many of the benefits of transformation can be delivered without legislation, but primary legislation will be needed to drive key elements of the structural reforms to the rail industry that were announced in the Plan for Rail. This includes underpinning legislation to enable Great British Railways to deliver its guiding mind function and to be held to account for delivering a safe, reliable, and efficient railway.
- 1.14 This consultation sets out the government's proposals for primary legislation to support delivery of the new industry structure set out in the Plan for Rail. We are only seeking to legislate where this is essential to facilitate delivery of reform. Some context on the wider delivery of the Plan for Rail has also been provided as background information.
- 1.15 The questions in this consultation seek your views on the primary legislative proposals set out in this consultation document. Your feedback is critical to ensuring this once in a generation transformation of Britain's railways delivers for passengers, freight customers and taxpayers.
- 1.16 The consultation is split into five main parts:
- **Chapter 1** – provides background on Great Britain's railways, including a summary of the existing rail industry structure. A summary of the key legislation currently in place relevant to rail can be found at Annex A.

- **Chapter 2** – describes the core functions and duties of Great British Railways, including how we propose to legislate and work with stakeholders to enable Great British Railways to become the single guiding mind for the railways.
- **Chapter 3** – sets out how we will ensure clear accountabilities in the rail sector through a new governance framework, including ORR’s role in providing independent scrutiny and challenge.
- **Chapter 4** – focuses on changes to a number of other wider industry structures and processes that are needed to deliver transformation of the railways and a new industry culture, including a new Passenger Champion role for Transport Focus and proposals for improving accessibility and for open data sharing.
- **Chapter 5** – summarises how the proposed legislative changes will underpin delivery of the Plan for Rail to create a railway that works for its users – passengers, local communities and freight customer/operators, as well as creating new commercial opportunities for the private sector and delivering for the taxpayer.

1.17 This public consultation will remain open for eight weeks and will close on 4 August. We will supplement feedback on the proposals set out in this consultation through additional engagement with users of the railways (passenger groups and freight) and rail industry bodies and experts, during the consultation period. Government will publish a response summarising the findings of the consultation and next steps, within 3 months of the consultation closing.

1.18 The remainder of this introductory chapter provides further background on the existing rail sector, to set the scene for the changes we are proposing through the Plan for Rail. For more information about the legislation currently governing the railways, please see Annex A.

## Impact Assessments

1.19 The impact assessments for this consultation can be found at <https://www.gov.uk/government/consultations/williams-shapps-plan-for-rail-legislative-changes-to-implement-rail-reform>. They outline our current best understanding of the costs, benefits, risks and disbenefits associated with the policy proposals put forward in this consultation, from engagement with stakeholders and internal analysis of the policies. We are looking to further develop our understanding of the impact of these legislative proposals through this consultation. There are two optional questions at the end of the consultation relating to the Impact Assessments.

## The Current Structure of the Rail Industry in Great Britain

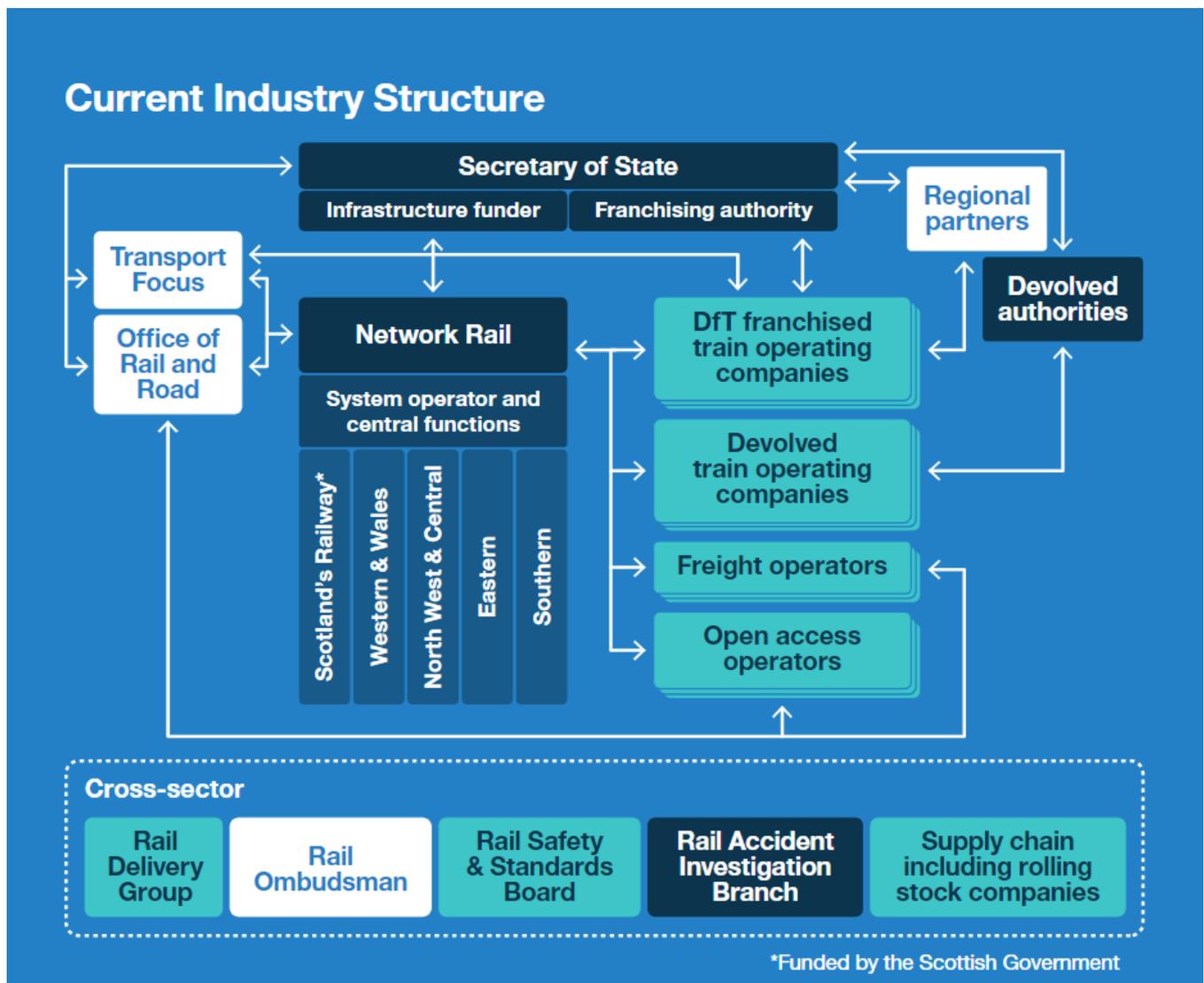


Figure 1 Visual Depiction of the Current Structure of the Rail Industry<sup>2</sup>

1.20 The organisation of Great Britain's railways today reflects the structures created by the Railways Act 1993 (amended and expanded in the Railways Act 2005). These were based on the principle of the separation of track and train to promote competition. Below we describe the current rail system, including the roles of key organisations. Where roles are changing as a result of reform, we set this out in the later chapters of this consultation document.

1.21 **The track:** Most rail infrastructure is publicly owned and operated by Network Rail. Network Rail's role (to safely and efficiently operate, maintain and improve Great Britain's railway), also applies to the network's bridges, tunnels, viaducts, signals,

<sup>2</sup> This is a simplified graphic that does not demonstrate how some organisations operate across the sector

level-crossings and major stations. Network Rail leads the process with train operators to develop the national rail timetable and allocate access to the rail network. The network is operated and maintained through funding from access charges (levied on passenger and freight operators), commercial income and a network grant provided to Network Rail as part of a multi-year funding settlement process (known as periodic reviews).

- 1.22 **Passenger trains:** The majority of passenger train services on the rail network of Great Britain are provided by privately-owned **train operating companies** (TOCs) under contracts let by the Department for Transport and the Scottish and Welsh governments. They are licensed to operate by the Office of Rail and Road (ORR). ORR, as independent regulator, approves the contracts that TOCs hold with Network Rail and ensures that the rail market is competitive and fair. ORR acts as final arbiter where disputes occur regarding TOCs' access to the network. Currently some passenger rail operations in England, Scotland and Wales are operated directly by government-owned bodies as Operator of Last Resort. A small number of passenger services are provided by independent Open Access Operators. The trains themselves are predominantly owned by private rolling stock leasing companies (ROSCOs) and leased to the train operating companies.
- 1.23 **Freight Operating Companies (FOCs):** FOCs operate commercially to provide freight services to customers and are licensed by ORR. Unlike most passenger train operators, FOCs do not operate under government franchises and are independent, commercial businesses. ORR, as independent regulator, approves the contracts that FOCs have with Network Rail and ensures the rail market is competitive and fair. ORR is final arbiter for any disputes that may arise regarding access to the network.
- 1.24 **Railway stations:** 20 large stations are managed directly by Network Rail, however, the majority of stations are leased to TOCs. The freehold of the stations still rests with Network Rail who has responsibility for 'landlords' maintenance, asset renewal and commercial development outside of the station boundary / facility area.
- 1.25 **Department for Transport:** The Department is responsible for the overall strategy and funding of the railway, except where these are devolved. It also plays a role in funding decisions for infrastructure schemes. Responsibility for designing, letting and managing contracts for the majority of passenger services in England currently sits with the Secretary of State for Transport, who also retains overall political responsibility for the railways and is answerable to Parliament for their functioning. The framework for passenger rail contracts rests on competitive tendering or direct awards to private operators. Historically, the majority of the contracts let this way transferred most cost and revenue risk to the private sector.
- 1.26 **Local Authorities:** Responsibility for some train services has been passed to local authorities and taken outside the franchising regime. The main examples include the transfer of the services that now form London Overground and TfL Rail to Transport for London and the transfer of services in the Liverpool city region to Merseytravel, which has been responsible for MerseyRail since it was let in 2003. In other cases, public sector transport bodies, such as West Midlands Rail Executive and Transport for the North, have worked in partnership with the Department for

Transport to specify contracts and play an ongoing role in the in-life management of these.

- 1.27 **Office of Rail and Road (ORR)<sup>3</sup>:** ORR is the independent safety and economic regulator for the railway in Great Britain, responsible for supporting efficient delivery of infrastructure and ensuring that railway operators comply with health and safety law. ORR sets requirements, monitors and regularly reports on the performance of Network Rail, as well as being responsible for taking action on certain rail related competition and consumer law issues. ORR can use its enforcement powers if Network Rail, train operators or other licensees fail to comply with their licence obligations. ORR's scope in respect of access includes: licensing of passenger and non-passenger train operators, infrastructure managers, stations and light maintenance depots, regulation of access contracts, acting as an appeals body for access matters, and establishing the framework through which operators must pay to use the railway.
- 1.28 **Rail Safety and Standards Board (RSSB):** RSSB is an industry body that provides standards, information and guidance for all aspects of railway operations. RSSB works closely with ORR to improve safety and performance across the industry.
- 1.29 **Rail Accident and Investigation Branch (RAIB):** RAIB independently investigates accidents to improve railway safety and inform the industry and the public.
- 1.30 **British Transport Police (BTP):** BTP polices Britain's railways. They provide a vital specialist service to rail operators, their staff and passengers across the country. They are overseen by the British Transport Police Authority, which aims to ensure the efficiency and effectiveness of the BTP.
- 1.31 **Transport Focus and London TravelWatch:** Transport Focus operates as the independent passenger watchdog, representing the interests of Great Britain's rail passengers. It aims to secure improvements, influence decisions and get the best deal for rail users (and users across other key transport modes), with an emphasis on evidence-based advocacy and research. London TravelWatch provides similar functions to Transport Focus within the London Rail Area and for Eurostar services.
- 1.32 **Rail Ombudsman:** The Rail Ombudsman deals with individual unresolved passenger complaints about train companies and rail service providers which are referred to it in relation to key aspects of rail services, providing binding decisions.
- 1.33 **Rail Delivery Group (RDG):** RDG is a rail industry membership organisation that delivers cross industry programmes and a range of critical cross-industry functions, such as systems for retailing tickets, National Rail Enquiries, settlement of industry revenue, railcard schemes and staff travel services, and also currently acts as a trade body for Owing Groups and Operators. As set out in the Plan for Rail, Great British Railways will ultimately take over the majority of the functions and responsibilities currently exercised by RDG. The Department for Transport, the Great British Railways Transition Team and RDG are working together with industry

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<sup>3</sup> ORR's role as Highways Monitor is out of scope of this consultation

to implement this change at the earliest opportunity. At the same time, a new trade body will be set up by owning groups and operators.

- 1.34 There are also a broad and vibrant range of private sector partners – other infrastructure managers, international rail companies – including services related to the vital Channel Tunnel, rail supply chain and innovators such as Rolling Stock Companies – that are fundamental to the operation of the railways. Private sector partners play an essential role across the whole of the rail system. They share risk and invest in the skills, capital, technology and innovation needed to deliver contracts for rail projects and services. They are represented by trade bodies and collaborate with government and Network Rail through the Rail Supply Group on priorities such as the Rail Sector Deal. Over 3000 small and medium enterprises are currently delivering £2.5 billion of contracts on the railways.

### Devolved Administrations

- 1.35 Devolved authorities across Great Britain play a critical role in the railway and have different roles, responsibilities and powers reflecting the different nature of devolution settlements and the populations they serve. Powers have been transferred to both the Scottish and Welsh governments for particular services as devolution has evolved. These include devolved contracting powers for passenger services and, for the Scottish government, responsibility for funding the infrastructure and setting rail strategy in Scotland.
- 1.36 The reforms set out in this consultation will have impacts across the whole of Great Britain. Whilst legislation will be needed to deliver key elements of the structural reforms to the rail industry that were announced in the Plan for Rail, the powers, roles and responsibilities of the Scottish and Welsh governments will not be diminished. Existing devolved authorities will continue to exercise their current powers and be democratically accountable for them.
- 1.37 Great British Railways will own and take responsibility for the vast majority of the national network, as Network Rail does today. The ownership and management of other networks such as the Core Valley Lines (in South Wales), HS1, the Heathrow spur and privately owned freight sidings will remain unchanged.
- 1.38 More broadly, it is our ambition that the benefits of reform will be felt across Great Britain, resulting in improved services, consistency and coordination across the entire network.

### Rail Safety and Security

- 1.39 We are not proposing any immediate changes to safety and standards roles across the sector, including those of ORR, Rail Safety and Standards Board (RSSB), Rail Accident Investigation Branch (RAIB) and the British Transport Police (and the British Transport Police Authority), through this consultation or changes to legislation.

1.40 The safety and security of passengers, staff, partners and members of the public is critical. Great Britain has one of the safest networks in Europe and this must continue as we deliver these reforms. We are clear that duty holders must maintain their focus on safety during this period of transition, in accordance with today's health and safety framework. The Department for Transport will continue to lead rail security policy, regulation and compliance and provide appropriate funding for safety and security organisation. A separate consultation will be undertaken with the sector in due course on opportunities to optimise the approach to health, safety and security under the new arrangements, but this will not impact on our immediate legislative reforms.

## Innovation

1.41 As confirmed in the Plan for Rail, Great British Railways will become the primary public funder of Research, Development & Innovation initiatives across the sector, delivering priorities set by Ministers. Changes will be implemented in close consultation with existing bodies, such as Innovate UK and the Rail Safety and Standards Board to develop the most effective arrangements, whilst ensuring that critical functions are preserved.

## 2. Establishing Great British Railways

### Introduction

- 2.1 The path to customer-focused delivery on the railways, day in, day out, requires fundamental changes to the way the system works as a whole. A key step to achieving this is the creation of the new public body, Great British Railways, to run the network in the public interest. Great British Railways will be responsible for the operational management of the railways, ensuring there is strong, unified, leadership across the rail system. The creation of Great British Railways is the driving force behind a simpler industry structure that is adaptable to changing customer needs, able to think and plan for the long term and work 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.
- 2.2 When Great British Railways is created, it will bring together activity from a range of organisations, including Network Rail, Department for Transport, Rail Delivery Group and the newly created Great British Railways Transition Team. This activity will be brought together within a single company to support full integration into a single guiding mind. Network Rail Infrastructure Limited (NRIL) will be used as the corporate entity that will become the main operating company of Great British Railways, thereby avoiding the need for any large-scale workforce transfer (NRIL has over 40,000 staff) or transfer of significant assets/contracts, which would be very complex and potentially create delay in implementing and realising the benefits of the reforms.
- 2.3 As we reform the railways, government is committed to not simply replicating the nationalised railways model or perpetuating the problems of fragmentation. Nor must Great British Railways be simply a larger version of Network Rail. Great British Railways will be responsible for running and planning the vast majority of the mainline rail network, will own most of the infrastructure and set the customer offer (except for devolved and open access operators) by awarding contracts to train operating companies – and will manage the network in the public interest. This

marks the end of a quarter century of fragmentation and the start of an era with a joined-up network directed by Great British Railways, working in partnership with devolved transport authorities, passenger and freight operators and other private and public sector partners.

### Great British Railways will:

- Deliver the government’s priorities for rail
- Develop a 30-year strategy and five-year business plans
- Manage the railway budget
- Be responsible for safe and efficient operations
- Be accountable for the passenger offer
- Own stations and infrastructure
- Plan access in the public interest, consistent with Secretary of State guidance
- Support the growth of rail freight market and cross-regional services
- Empower its regional divisions and their local operational teams to make decisions

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Figure 2<sup>4</sup> Role of Great British Railways

2.4 The Williams-Shapps Plan for Rail (“Plan for Rail”) acknowledged the successes of privatisation and the British Rail eras, as well as their failures. Privatisation has seen record growth in passenger numbers and both public and private investment, but also a sector inhibited by its inability to set clear long-term priorities and invest in simple and affordable customer-focused solutions. Historically, British Rail was unable to plan properly or deliver efficiently and operated year-to-year leading to inefficiency.

2.5 Bringing track and train together under the single, national leadership of Great British Railways will require legislative changes. In this Chapter we set out:

- A summary of the proposed functions and duties that will be placed on Great British Railways
- How we expect to legislate and adapt current industry processes to bring track and train together under Great British Railways as the single guiding mind for the railways
- How we will promote competition for the market and proposed legislative measures seeking to address competition concerns arising from the creation of Great British Railways as a guiding mind

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<sup>4</sup> Great British Railways: The Williams-Shapps Plan for Rail, p30

## The Core Functions and Duties of Great British Railways

- 2.6 The establishment of Great British Railways will be formalised through legislation. The intention is to create an organisation that can perform its functions and meet its responsibilities as a guiding mind for the railways across Great Britain. To achieve this, a new designation power will enable the Secretary of State to appoint an 'integrated rail body', namely Great British Railways, as a new public body responsible for running the railways safely and efficiently to maximise social and economic value. As the integrated rail body, Great British Railways will be required to fulfil a range of functions and duties described below, which we propose will be set out in the Great British Railways Licence (see Chapter 3 for further detail on the proposed Great British Railways Licence).
- 2.7 Great British Railways will have a set of core functions:
- To plan and manage access to, and ensure safe and effective use of, the Great British Railways Network, consistent with Secretary of State guidance
  - To manage Great British Railways infrastructure
  - To manage and secure delivery of high-quality, reliable Great British Railways passenger services and be accountable for the customer offer
- 2.8 In exercising these functions, Great British Railways will be required to:
- Co-operate, support and provide leadership across rail systems – in the short and long term
  - Perform these functions in manners which pursue financial sustainability and promote efficiency
  - Act transparently, including in relation to the promotion of open data
  - Co-operate and collaborate with other organisations on day-to-day operations and long-term planning
  - Encourage private sector involvement in the railway where it brings benefits for rail users and society as a whole
  - Consider the impacts on railway operators and other rail bodies
  - Ensure the safe, efficient and effective maintenance, renewal, improvement and development of the railways
  - Ensure the capability of the railway, its people and systems, including in the longer term
- 2.9 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 considerations to be set out in the Great British Railways Licence. This will include a duty to act in a manner it considers maximises the social and economic value (as defined by the Secretary of State) from the use of the network. In addition, these considerations are 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

2.10 It will be important to ensure that Great British Railways can operate in the interest of the whole of Great Britain. This requires Great British Railways to understand its users and the government's strategic aims, and to take decisions that consider all the different factors that make up the overall public interest, recognising they may be in tension.

2.11 While Great British Railways will become the operational guiding mind for the railways, ultimate accountability for the framework for the railways in Great Britain will continue to sit with the Secretary of State for Transport, or Devolved Administrations where railway activities are devolved.

**Questions:**

1. 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? (paragraph 2.6) Please explain.
2. Are there any other factors Great British Railways should balance and consider as part of its public interest duty? (paragraph 2.9) Please explain.

## **Introducing the New Contracting Approach, Passenger Service Contracts**

2.12 The end of the franchising model during the COVID-19 pandemic set the foundations for the introduction of a new commercial model, Passenger Service Contracts. This new system will build upon the successful public-private partnership approaches used in London, Sweden, Germany and Australia where rail authorities contract private partners to operate trains under a concession model. These contracts will enable operators to be held to account for running trains on time, delivering passenger satisfaction and controlling costs. Operators will be focused on meeting passengers' priorities and incentivised to grow rail usage and revenue by a new toolkit of measures.

2.13 The new generation of contracts will be overseen, procured and delivered by Great British Railways, encouraging it to run the railways with a strong commercial outlook, and enabling it to plan and manage its network on an integrated basis, to

deliver benefits to all passengers and improve efficiency. It will be tasked to work innovatively with diverse private sector partners across the sector and beyond to benefit passengers and taxpayers and it will have the scope and ability to create new opportunities for private sector innovation and investment. The new structure will provide the flexibility to implement changes sooner, creating an organisation commercially incentivised to deliver for its customers.

- 2.14 The commercial parameters of the contracts and the precise allocation of responsibilities to train operating companies (TOCs) is not constrained by legislation. Therefore, although changes to contract type and roles and responsibilities are being developed as part of the Plan for Rail, these Passenger Service Contracts are not addressed here as no legislative change is required to deliver them. A separate market engagement programme is already underway for this area.

### **Amending and transferring Secretary of State franchising authority provisions in the Railways Act 1993**

- 2.15 To ensure Great British Railways can truly integrate decision making and leadership across track and train, we propose that 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.
- 2.16 As the ultimate accountability for the railways in Great Britain (other than those where responsibility has been devolved to Scottish and Welsh Ministers) will continue to sit with the Secretary of State for Transport, we propose that the powers defining which services Great British Railways will be responsible for providing via Passenger Service Contracts (the franchise designation and exemption powers) and the process that Great British Railways must follow in selecting an operator for a Passenger Service Contract (Section 26 policy), will be retained by the Secretary of State.
- 2.17 The existing role and responsibilities of the Devolved Administrations in relation to provision of passenger services will remain unchanged. However, the Plan for Rail set out that devolved railways will be strengthened, through close collaboration with Great British Railways. To support this, we propose to enable through legislation the ability for Scottish and/or Welsh ministers to delegate their contracting authority for devolved passenger services to Great British Railways. 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. The terms of any delegation would need to be mutually acceptable to ministers in the Devolved Administration(s) and the Secretary of State and clearly set out the roles and responsibilities of each party, including appropriate governance controls, taking into account the existing devolution settlements.

2.18 We propose 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 is proposed that these will 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 means that competition or a short-term direct award to a private operator is likely to deliver poor value for money for the taxpayer – and this will be included in primary legislation. Additional detail on the criteria and the circumstances in which they may be utilised will be added in the franchising policy statement published by the Secretary of State following a consultation process. The prohibition on public sector bidders in England and Wales for operators appointed via competition will remain.

**Questions:**

3. 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? (paragraph 2.17) Please explain.
4. 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? (paragraph 2.18) Please explain.

## Amending Retained EU Regulation 1370/2007

2.19 To facilitate the reforms outlined in the Plan for Rail and to ensure the smooth introduction and running of Passenger Service Contracts, we will need to amend Regulation 1370/2007. While the UK was a member of the EU, Regulation 1370/2007 created a bespoke procurement and state aid/subsidy control regime for ‘public service contracts’ in recognition that such contracts are needed in the general interest of the public and cannot be operated on an entirely commercial basis. Passenger rail contracts let by the Secretary of State are considered as ‘public service contracts’ for these purposes, and Regulation 1370/2007 takes these agreements outside of the mainstream procurement and subsidy control rules and sets out special rules for such agreements.

2.20 The European Union (Withdrawal) Act 2018 retains Regulation 1370/2007 as domestic law in Great Britain. Whilst the regulation was amended under domestic law to make necessary drafting changes following the UK’s exit from the European Union (such as where notices are published), the legislative framework for the award of “public service contracts” as it existed under EU law has been retained. We propose that the following amendments to Regulation 1370/2007 are made in

primary legislation, with the purpose of ensuring the ongoing operation of the rail contracting regime in Great Britain and for the smooth delivery of the Plan for Rail:

- Introduce domestic legislation that reduces the limitation period for the challenge remedy for awards made under Regulation 1370/2007, to provide a relatively short period for challenges to be made
- Introduce a recovery remedy to accord with the new UK subsidy regime and clarify who may bring a claim
- Reintroduce Articles 5(6) and 7(3) to ensure that flexibility and transparency in making direct awards is retained
- Amend wording within 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

## Challenge remedy

2.21 Challenge Remedy is the process an operator can follow to challenge a decision made under Regulation 1370/2007. When Regulation 1370/2007 was adopted, the government did not introduce domestic legislation to set out a remedy. This was because judicial review was available. However, a judicial decision in the course of litigation indicated that such decisions may also be subject to legal challenge through private law mechanisms. This leads to extended administrative uncertainty as private law claims may be brought during a six-year limitation period.

2.22 We are proposing to introduce domestic legislation that reduces the limitation period for the challenge remedy for awards made under Regulation 1370/2007. The limitation period is proposed to be one month, in line with the subsidy and procurement regimes. This will maximise certainty for UK granting authorities by having a relatively short time limit for bringing a challenge to an award, whilst still providing appropriate protections for private sector bidders to ensure a fair and proper process. We are considering introducing a remedy of recovery of unlawful subsidy to accord with the new UK subsidy regime. We will make appropriate amendments to ensure transparency of awards. We will also clarify that parties must be 'interested' and 'affected' to challenge a decision.

## Direct awards

2.23 Articles 5(6) and 7(3) of EU Regulation 1370/2007 will cease to apply on 25 December 2023 due to a 'sunset clause' from the EU 'Fourth Rail Package', which sets a time limit on that direct award power. We are proposing to reintroduce these provisions in legislation to ensure that existing flexibilities to make Direct Awards for the provision of passenger services are fully retained beyond late 2023.

2.24 Article 5(6) will allow us the maximum amount of flexibility in making direct awards as we begin to re-compete rail contracts under the programme of competitions for

Passenger Service Contracts. We also propose reintroducing Article 7(3) since this will ensure transparency for awards made under Article 5(6).

### Prior Information Notice (PIN) notice period

- 2.25 To ensure clarity and relevance for the UK market, we propose to amend Article 7(2) of Regulation 1370/2007, which details the notice period for publishing a Prior Information Notice (PIN) before an Invitation to Tender (ITT) or Direct Award, to clarify that “launch”, which signals the end of the one-year notice period, will mean the earlier of the publication of the documents on gov.uk or their issue to pre-qualified bidders.
- 2.26 This will ensure greater certainty as to when Prior Information Notices informing the market of upcoming Invitations to Tender and Direct Awards must be published. We also intend to clarify that, in the case of Direct Awards, the one-year publication period runs to the entering into of the award.

#### **Question:**

5. Do you support the proposed amendments to Regulation 1370/2007, which are i) reducing the limitation period for the challenge remedy, ii) introducing a remedy of recovery to accord with the new UK subsidy regime, iii) clarifying who may bring a claim, iv) retaining the ability to make direct awards under Article 5(6), and v) clarifying the PIN notice period? (paragraph 2.20) Please explain.

### Securing Better Use of the Rail Network

- 2.27 The railways are a vital national asset, funded by taxpayers and farepayers, so it is important that Great British Railways maximises the economic and social value of the network and that it is operated efficiently, to its full potential in the public interest.
- 2.28 The Plan for Rail committed to a new rules-based access system underpinned by legislation. Since publication in May 2021, government has engaged with stakeholders across industry on how we implement the access proposals in the Plan for Rail. We believe there is much that can be achieved through a package of targeted reforms. The objective of the reforms outlined in this part of the consultation are to enable Great British Railways to better strategically plan and manage access to the network, in the public interest, getting better outcomes for passengers, as operators will be better able to respond to their needs. At the same time, it will also maintain key legislative protections for passenger and freight operators, that guarantee fairness and transparency for users of the railway, giving

the private sector certainty and confidence to make long-term investment decisions in the railways.

2.29 ORR will maintain its role in providing robust independent regulatory oversight of the access framework. This includes approving access contracts, their role with respect to access appeals and maintaining the power to direct that access to the network must be granted by Great British Railways. ORR will also continue its role in relation to access charges, which will continue to be set through the periodic review process for all operators on the national rail network.

2.30 Our proposed package of access reforms comprises the following:

- Reform of industry processes
- A new duty for ORR 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
- A power to amend access related EU derived railway regulations through secondary legislation in the future, subject to the affirmative procedure (with minor near term amendments to enable Great British Railways to act as a guiding mind).

## Reforming industry processes

2.31 The establishment of Great British Railways brings significant opportunities to simplify processes and procedures across the industry. Changes to the existing complex contractual framework for access, coupled with an amended regulatory approach can bring major benefits and are necessary to deliver a more effective approach to managing network capacity.

2.32 The government will commission Great British Railways Transition Team to lead work developing and delivering reforms to the framework that governs access across the multi-user railway. This work will identify and recommend changes to the existing framework to reflect the new industry structure. It will need to draw on the wider expertise of the sector, including the Devolved Administrations, passenger and freight operators and other infrastructure managers in order to ensure proposals are deliverable and effective. The government will ask ORR to support the Great British Railways Transition Team, to develop and deliver the commission, as an engaged participant and enabler of appropriate change.

2.33 This commission is intended to ensure that cross-sector processes, agreements and systems:

- Put the interests of passengers and freight customers first
- Are transparent and simpler, reducing administrative costs and complexity across the industry for all parties

- Contain the appropriate tools for Great British Railways to plan and manage the network
- Provide confidence for passenger and freight operators, of transparent and non-discriminatory treatment, with appropriate certainty to support business planning and investment
- Ensure the continued smooth passage of trains between Great British Railways and other Infrastructure Managers

2.34 The commission will look at changes which are needed to support the reforms and will consider a number of ways in which the current system can be simplified and improved. Potential areas for reform include:

- Enabling integrated planning and delivery by Great British Railways by overhauling the timetabling and service development processes to maximise efficiency, value for money and social and economic benefits realised
- Enabling simpler, more effective management of performance and operations across Great British Railways' Passenger Service Operators and the wider sector
- Introducing changes to support simpler management of stations, where we envisage some train operator responsibilities transferring to Great British Railways

2.35 Great British Railways will consult across industry on its own policies for how it plans and manages access to and use of the railway, reflecting any relevant efficiencies and simplifications that have been identified. The Secretary of State and ORR must also be fully consulted, and the Secretary of State will need to confirm that the proposals meet government's policy goals. Great British Railways policies will offer certainty and clarity for the industry, ensuring that devolved rail bodies and private train operators, both passenger and freight, have the confidence to make long-term investment decisions and will set out how access to the railway will be managed fairly.

### **A proposed new duty on ORR 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**

2.36 ORR will continue to play a central role in ensuring applications for capacity are treated fairly and transparently. This will be especially important as Great British Railways identifies opportunities for simplification and efficiencies in industry practice.

2.37 It is important that ORR is an engaged participant and actively enables Great British Railways to plan and manage the network in the public interest. ORR, Great British Railways and public sector funders will need to work to align and co-ordinate their decision-making processes and criteria, 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, whilst maintaining effective safeguards through a rules-based regime that gives confidence to users of the network.

- 2.38 To enable this, we are proposing a new duty for ORR 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. The government has worked closely with ORR to ensure that the new duty does not conflict with existing duties, does not compromise ORR's independence and provides ORR with a clear and specific legal requirement to take Great British Railways' approved access policies into account in its decision-making.
- 2.39 ORR will be a consultee on Great British Railways' policies on matters of access and will provide advice to the Secretary of State on whether they align with the requirements placed on Great British Railways through its legislative and governance framework.
- 2.40 This new duty and ways of working will be underpinned by updated Secretary of State Guidance to ORR which will address priorities for simplification, efficiencies and management of the network in the public interest, helping to retain a strong focus on these issues.

**Question:**

6. Do you support the proposed statutory duty on ORR 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? (paragraph 2.38) Please explain.

**A power in primary legislation to amend EU derived rail markets legislation**

- 2.41 As set out above, government believes that considerable progress in simplifying process and cutting bureaucracy can be made by Great British Railways within the existing framework. However, over the last 30 years the legislative framework for access has been supplemented and built on by some highly prescriptive processes set out in Regulations implementing EU Railways Directives and a number of EU Delegated Decisions and Implementing Regulations.
- 2.42 These EU derived rules were designed to facilitate the EU internal market for rail. Now we have left the EU we can seize the Brexit opportunity to make changes to the rules that can restrict the ability to react quickly to changing circumstances, including where they may prevent innovative solutions to overcoming some of the problems within the existing framework.
- 2.43 Government proposes to include a power in primary legislation to make secondary legislation, using the affirmative procedure, that will enable us to amend EU derived

rules with a view to making the system work better and more efficiently for users of the railway. In parallel with the commission to the Great British Railways Transition Team, government will undertake a detailed analysis of the EU derived rail markets legislation to see if it is still fit for purpose and remains relevant in the new structure, ensuring that opportunities for reform are realised, while key protections are maintained to ensure certainty. We will consult with interested parties across the industry on the use of the power and on any future draft Statutory Instrument to enable proper scrutiny of proposals before any changes are made.

### **Amendments to enable Great British Railways to function as a guiding mind**

2.44 Bringing track and train closer together under Great British Railways may require primary legislation to make some technical changes to the EU derived Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016. These regulations set out requirements for separation of certain decision-making functions and we are using this consultation to identify whether there are immediate legislative amendments that need to be made to ensure we do not restrict collaboration, integration and a joined-up approach between track and train.

2.45 We strongly recognise the need for the access regime to operate consistently and coherently as a whole. Any initial changes will be limited to those we consider necessary to enable the effective management of the Great British Railways managed network. These changes will only apply to the Great British Railways managed network and will not apply to networks managed by other infrastructure managers.

#### **Question:**

7. 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? (paragraph 2.44) Please explain.

### **Supporting Improvement Through Effective Competition and Strong Collaboration**

2.46 When the conditions which enable effective competition are met, competition delivers benefits for customers, efficiency in the production of goods and/or services, and, with the right incentives, improved investment and innovation. Critically, in rail, it helps to deliver value for taxpayers, where efficiency reduces the subsidy required to fund the railways. Competition, through an effective competitive tendering process for delivering passenger services, in supply chains, and in freight markets, is a vital aspect of the Plan for Rail and will help to drive innovation and improvement.

2.47 However, even before the COVID-19 pandemic, the franchising model for competition had failed to deliver genuine competition in far too many cases – reducing the benefits for passengers and taxpayers. This needs to change and reform is essential to restore competition to the market and ensure it is effective. Great British Railways will aim to compete all contracts, foster more competitive bids, and attract and retain new partners, driving efficiency and improvement.

### Widening the scope of ORR’s duty to promote competition

2.48 ORR has several general duties under section 4 of the Railways Act 1993, including a duty to promote competition in the provision of railways services for the benefit of users of railway services. This is particularly relevant to ORR’s role in respect of access, where the duty has been considered in relation to passenger open access applications.

2.49 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/private market. In addition to ORR’s existing duty to have regard to the Secretary of State’s funds, to further strengthen protections for taxpayers, we are proposing a limited legislative amendment to ORR’s existing section 4(1)(d) competition duty so that in addition to users, the regulator also takes into consideration public sector funding of rail services in applying the competition duty - including on access to the track. ORR’s duty to promote competition is just one duty the regulator must weigh alongside its other duties.

**Question:**

8. Do you agree with the proposed recasting of ORR’s competition duty to better reflect public sector funding? (paragraph 2.49) Please explain.

### Driving efficiency and innovation by removing barriers to collaboration between Passenger Service Contract operators

2.50 The Plan for Rail, as well as supporting competition, 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, and a joined-up approach to finding a resolution when things go wrong, as well as a simple consistent fares structure. Great British Railways will also need to ensure that efficiencies are considered across all operators with rail passenger contracts with Great British Railways (including its public sector operators) (“Great British Railways Operators”) rather than by individual operators, to reduce the need for public subsidy of the system

and to protect taxpayers, growing the system and ensuring efficient use of available capacity.

- 2.51 Through its emergency response to the pandemic, the rail sector has shown it can innovate and demonstrated the potential benefits that greater collaboration could bring. Collaboration between operators will be key to support this whole system approach and ensure the railway delivers more effectively for customers and taxpayers.
- 2.52 Passenger Service Contracts will focus on improving the passenger experience and will support operators to work effectively with Great British Railways as well as other industry partners, including other operators, local teams and suppliers, such as train-leasing companies, to improve services and performance.
- 2.53 Each Passenger Service Contract will require and incentivise operators to cooperate and work collaboratively with Great British Railways and its other partners. Coordination of timetables will improve performance and efficiency and offer an appropriate overall level of service to customers, whilst ensuring value for money, with joint working during disruption or emergencies. Improvements in reliability can be unlocked by creating a focus on reducing delays and the impact of delays rather than a system which incentivises all parties to blame each other, with no one to fix the problem. It will also be important to enable a coordinated and consistent approach to fare setting even where some fares setting responsibility is delegated by Great British Railways to Train Operating Companies, so that fares are transparent and understood by customers.
- 2.54 It is essential that legislation enables this collaboration and additionally gives operators a level of reassurance and confidence that they can collaborate and share relevant information where this will lead to benefits. Therefore, we propose to clearly set out in legislation that Great British Railways will have a power to issue directions which requires its Great British Railways Operators 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 particular, such a direction would only be possible where collaboration would lead to defined benefits, such as improving the operational delivery of services for passengers and/or improving the efficiency of the rail system as a whole for taxpayers. Directions issued by Great British Railways would have to be accompanied by appropriate reasoning, be published and go no further than is necessary to achieve the benefits from collaboration.

2.55 In doing so, we will ensure that legitimate commercial interests of third parties (including freight, open access and charter operators) are protected. We do not plan to alter how competition law would apply to Great British Railways. We will look to work with industry, the Department for Business, Energy and Industrial Strategy (BEIS), ORR and the Competition and Markets Authority, and consider the responses to this consultation, to design this regime.

**Questions:**

9. Do you support the proposal to include in legislation, a power for Great British Railways to issue directions to its contracted operators to collaborate with one another in circumstances where doing so could otherwise give rise to concerns under Chapter I of the Competition Act 1998, in particular, where this could lead to defined benefits to taxpayers and/or passengers? (paragraph 2.54)
10. Would Train Operating Companies be willing to share information and collaborate in the way envisaged without the proposed legislative provisions? What are the risks to them without the proposed legislation? Would the proposed legislative approach help to resolve these risks?
11. Are there any particular additional safeguards (in addition to the safeguards outlined in paragraph 2.54 - 2.55 above) that you consider necessary to support the interests of third parties (including freight, open access and charter operators) or to otherwise protect passengers and/or taxpayers?

**Fares, ticketing and retail – ensuring fairness for third party retailers**

2.56 The Plan for Rail promised an exciting revolution in the way passengers buy and pay for their rail travel, and this will be backed by £360m of investment in the next three years announced in last year's Spending Review.

2.57 Industry reform is central to delivering and sustaining the greatly improved customer experience, revenue growth and cost-efficiency that this investment will deliver. Responsibility for fares, ticketing and retailing strategy for Passenger Service Contracted operators will be brought together into Great British Railways, which will be responsible for the customer offer and reforming ticket purchasing by making fares simpler, clearer and easier to understand.

2.58 Great British Railways will also be made responsible for delivering cost efficiency in retailing. The rail industry has so far been unable to emulate the modernisation and cost savings which other transport operators have achieved through digitisation. Great British Railways will roll out digital ticketing and contactless payments to deliver savings and improve the passenger offer, while a new online retail offering will replace the multiple train operator websites. This approach will unlock greater economies of scale while developing a clear, coherent and attractive customer offer

across the network, learning from the best in-class providers and putting an end to current confusion.

- 2.59 A trend over the last 20 years has been the growth of internet sales. Associated with this, we have seen the emergence of a range of specialised, dedicated independent online retailers, licensed by the industry to sell train tickets. We have welcomed these independent retailers competing in the ticket retail market, particularly where they are able to innovate and grow new markets. These retailers have driven forward improvements to the quality of ticket purchase and developed new technologies, both as suppliers to train companies and retailers in their own right. Whilst Great British Railways will assume responsibility for retailing for Department for Transport franchised Train Operating Companies / Passenger Service Contract operators, we value the expertise and innovation independent retailers have brought, and the Plan for Rail makes clear that they will continue to play an important role in the future. Great British Railways will seek to reduce barriers to entry in the third-party retailing market, enabling passengers and the industry as a whole to benefit from the added reach and innovation they can bring.
- 2.60 It is important that, as reform beds in and new relationships form, independent retailers can have confidence that they will be treated fairly. Competition law, enforced by ORR as the independent competition authority, already provides a high degree of legal protection for independent retailers, and we intend that will continue. In addition to this, we propose to use the governance framework (see Chapter 3) and the structuring of Great British Railways to ensure that Great British Railways' online retailing activities are independent of its wider decision making about retail strategy, including licensing decisions, and to maintain a level playing field between its direct online retail business and independent retailers.
- 2.61 Great British Railways will need to fulfil its role as the guiding mind, deliver on the government's objectives for reform, effectively manage costs and revenues, and retail all rail services and products alongside third-party retailers. However, in some cases Great British Railways may have to retail commercially unattractive products which third party retailers do not wish to. We are considering how to ensure that Great British Railways is able to fulfil these objectives, while also providing safeguards for independent retailers to ensure they are treated fairly and can continue their positive contribution to online retailing.

**Question:**

12. 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? (paragraph 2.61) Please explain.

## 3. Establishing the New Sector Structure

### Introduction

- 3.1 The approach behind the Williams-Shapps Plan for Rail (“Plan for Rail”), laid out by the Secretary of State and Keith Williams in the white paper, focuses on simplification, clear lines of accountability and joined-up leadership. The responsibilities of organisations across the sector will change significantly to enable simplification and integration, which has been designed collaboratively with partner organisations across the industry.
- 3.2 The structural changes, and the proposed changes to legislation we set out in this consultation, will not on their own deliver the vision for a customer-focused rail system, but it will facilitate it. It is crucial that culture change comes from the people, teams and organisations across the sector. This includes bringing greater diversity into the sector, challenging disjointed and inefficient ways of working, and collaborating or innovating to achieve outcomes that deliver better, more efficient services for customers.
- 3.3 Great British Railways will be structured to create a balance between the need to take a whole-system view nationally, particularly for freight and cross-country services, and to meet the needs of local communities and regions. In most cases, trade-offs can be managed as in London where TfL, regional, long-distance and freight services use the same tracks. Key strategic decisions will be taken centrally, with operational matters led by five regional divisions. The five regional divisions will be responsible and accountable for the whole system in their areas, including budgets. Each division will be led by a customer-focused leadership team, able and empowered to secure change, working closely with operators and suppliers to do this.

- 3.4 The Department for Transport will take on a more strategic role, defining the policy and strategic vision for rail together with other transport services, providing funding for rail in line with wider government priorities and sponsoring Great British Railways. It will be for Great British Railways to lead the day-to-day operations of the rail network within the framework established by Ministers.
- 3.5 There will also need to be a change to responsibilities for ORR and other public bodies, such as Transport Focus, that will hold Great British Railways, and its operators, to account for their responsibilities across the system. Devolved Administrations will retain their existing roles as part of the government's commitment not to change the devolution settlement for rail.

## Great British Railways' Relationship with Government

- 3.6 Great British Railways will be established with an arm's-length relationship to government. This will ensure a clear separation between government and the organisation, provide the appropriate level of independence and clear accountability for day-to-day decisions and delivery, whilst still enabling the Department for Transport to set the policy and strategic vision. When the government directs Great British Railways, it must do so in a way that is transparent, robust and follows clear processes.
- 3.7 The Department for Transport will be responsible for sponsoring Great British Railways and for its relationship with government to ensure it delivers against its Business Plans and performs as expected, working together to achieve desired outcomes. As with Network Rail today, the Scottish government will also be a funder of Great British Railways. The Scottish government will have powers in relation to Great British Railways in Scotland that mirror its current powers in relation to Network Rail.
- 3.8 As a public sector organisation, Great British Railways will have robust corporate governance in line with best practice and the requirements set by government. The Secretary of State will have powers over senior appointments as set out in the Plan for Rail, including on the make-up of the Board and senior pay matters. This will be a key lever that the government will look to use to ensure appropriate skills, experience and diversity exist in Great British Railways' leadership team, whilst doing so responsibly and efficiently.
- 3.9 The formal processes underpinning the corporate relationship between Great British Railways and the Department for Transport will be set out in a Framework Agreement. This will set requirements in relation to corporate governance and financial management arrangements. In addition, Great British Railways' Articles of Association will set the rules over the running of the organisation and responsibilities of directors, shareholder rights and other matters. Both of these documents will be publicly available for transparency.

## A New Governance Framework

- 3.10 To enable clear accountabilities, we propose to create a new governance framework to clarify the roles and responsibilities of each of the key organisations across the rail sector, including the Secretary of State.
- 3.11 Government's focus will be on setting requirements and directions to Great British Railways for the long and medium term. This is important in ensuring Great British Railways has the day-to-day autonomy and authority to make operational decisions in the public interest. We propose that a new Great British Railways Licence will set out its duties and functions and that the licence will be enforced by ORR. As stated in the Plan for Rail, the Secretary of State's relationship with Great British Railways will be similar to that between the Mayor of London and Transport for London. The Secretary of State will have the ability to intervene when necessary, including through powers to issue guidance and directions on any matter, following a transparent and structured process.
- 3.12 A 30-year Strategy will be an element of the governance framework, providing a clear, long-term vision for the railway and enabling government to set clear direction for the sector in support of national priorities. A call for evidence for the Whole Industry Strategic Plan was issued in December 2021 and closed in February 2022.

### Governance of the new industry structure

- 3.13 The governance framework for Great British Railways is underpinned by a number of strong, effective, levers which are described below. This approach resembles other sectors (e.g. regulated utilities and highways) but has been tailored to reflect the rail sector.
- (a) **Statute:** primary legislation will set out the essential requirements for the establishment of Great British Railways and the statutory framework for governance.
  - (b) **Great British Railways Licence (The Licence):** will be consulted on and issued by the Secretary of State to Great British Railways. This will be redesigned from today's Network Rail network licence to reflect that Great British Railways will have integrated responsibilities across track and train.
  - (c) **Directions & Guidance:** will allow the Secretary of State to set additional requirements on Great British Railways where a more direct or bilateral relationship between the Secretary of State and Great British Railways is considered appropriate. These will need to be consistent with the licence and statute.
  - (d) **Business Planning and Funding process:** Great British Railways will be required to produce a five-year Business Plan, setting out planned activity across track and train, in response to high level outputs issued by the Secretary

of State and Scottish Ministers. The Business Plan will be produced to align with the five-year infrastructure funding settlements from government, and other income Great British Railways will receive during the Business Plan's period. Funding for passenger services will continue to be set through government fiscal events.

## Statute

3.14 The governance framework will be underpinned by a combination of new and existing legislation enshrining the essential requirements for the establishment and functioning of the new organisation in the sector. This will:

- Enable the Secretary of State to appoint an integrated Rail Body (Great British Railways) as a new body responsible for the mainline railway in Great Britain.
- Reflect a requirement for Great British Railways to comply with a Secretary of State-issued Licence, which will be consulted on and then issued under the Railways Act 1993, and amend legislation to enable the Secretary of State to modify the Great British Railways Licence after consultation.
- Give powers to the Secretary of State to issue directions and guidance to Great British Railways and require Great British Railways to follow them.

## A new Great British Railways Licence

3.15 The Secretary of State will issue a statutory licence to Great British Railways focused on enduring duties, activities and behaviours in respect of railway management and delivery. This will be redesigned and go beyond the current network licence to reflect that Great British Railways will have integrated responsibilities across track and train and is not just an infrastructure manager.

3.16 We propose to capture the new Great British Railways' duties (see paragraphs 2.6-2.9, chapter 2) in the licence. The Plan for Rail confirmed that Great British Railways will have specific statutory duties to improve accessibility, promote rail freight, and to consider environmental principles in all its operations. We propose putting a requirement in primary legislation for the scope of the licence to include duties on Great British Railways relating to accessibility, freight and the environment.

3.17 The statutory nature of the licence means that any requirements on Great British Railways which are included in it are binding and can be enforced by ORR. This approach has an additional benefit of enabling a more comprehensive and informed approach to duties, as we can set out more detail in the licence about how we expect Great British Railways to meet these duties than we could in primary legislation. It also means that the set of duties that are being placed on Great British Railways in the licence sit together to form a coherent framework, which is

particularly important since Great British Railways must act in a way that balances the benefits across the different factors.

3.18 The licence will focus on functions that are key to delivering an efficient and safe railway, which any competent authority would need to deliver. It will also set out key behavioural requirements relevant to how Great British Railways will manage and deliver its functions.

3.19 We propose the licence will:

- Define the core functions of Great British Railways, how it must deliver these, and how it must approach its responsibility to act in the overall public interest (see paragraph 2.9, chapter 2), including a requirement to consult, develop, publish and adhere to policies for how the network will be accessed, managed and operated in the public interest (in accordance with Secretary of State guidance)
- Require Great British Railways to produce a 30-year Rail Strategy on behalf of Secretary of State and to have regard to this as it exercises its functions
- Require Great British Railways to develop and deliver integrated five-year Business Plans, and set out key elements of change control
- A requirement to develop publish and adhere to Great British Railways' policies in a number of areas such as accessibility, freight and the environment.

3.20 The licence will be produced and issued by the Secretary of State. Given it is a key instrument in protecting stakeholders across the rail sector, particularly freight, devolved bodies and open access operators, government intends to consult on the new Great British Railways Licence in due course. The licence will also steer the interactions between Great British Railways and other infrastructure managers, including HS2.

3.21 The licence will be reviewed and amended by the Secretary of State. The Scottish government will be formally consulted as part of this process as a funder of Great British Railways infrastructure. Great British Railways, ORR, Transport Focus, and other parties considered appropriate will also be consulted. We envisage that the licence will be reviewed approximately every five years, at an appropriate point in the business planning cycle to ensure it remains fit for purpose. A new provision will be made in legislation to give powers to the Secretary of State to modify the licence, maintaining the requirement to give notice and consult with industry before making amendments.

3.22 In addition, ORR will retain powers to make modifications to the licence where it has relevant technical expertise, subject to consent by Great British Railways. Under the existing system if ORR cannot secure agreement with Network Rail on changes to the licence, ORR can refer these modifications to the Competition and Markets Authority (CMA). We propose that in the new system this CMA referral route is no

longer necessary for the Great British Railways Licence and should be removed given Great British Railways will be accountable to the Secretary of State.

## Licence enforcement

- 3.23 ORR currently monitors Network Rail's compliance with the network licence and can take enforcement actions where necessary. We propose that in the new industry structure ORR retains this role and will be responsible for monitoring and enforcing Great British Railways' compliance with the licence across the whole of Great Britain. As an independent regulator, ORR 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.
- 3.24 Great British Railways will be expected to make ORR aware at the earliest opportunity if they become aware of any actual or potential licence breaches to ensure appropriate measures are put in place to reduce the risk of a breach of licence conditions.
- 3.25 ORR will continue to have robust powers in place so that enforcement action can be taken when required. We propose that ORR retains its existing enforcement powers under sections 55 and 56 of the Railways Act 1993. ORR 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.
- 3.26 Under section 57A of the Railways Act 1993, ORR can currently issue a financial penalty for breach of licence conditions. Issuing a financial penalty to a publicly funded and owned body has limited ability to incentivise behaviour and may diminish Great British Railways' ability to deliver improvements for passengers and end users. Moreover, Great British Railways will be ultimately accountable to the Secretary of State, and the Secretary of State will hold powers to sanction Great British Railways where necessary, by exercising corporate and funding controls, including powers to appoint certain members of Great British Railways Board. We propose to remove the power for ORR to fine Great British Railways for breach of its licence, although ORR will still be able to fine Great British Railways if it disregards a decision made by ORR relating to access or charging. ORR would still have the powers to fine other types of licence holders where it currently has those powers. The Secretary of State will take into account Great British Railways' performance in this regard when considering performance-related pay recommendations.
- 3.27 Through their existing statutory powers and clear licence conditions, ORR will have the necessary provisions to deliver its monitoring and scrutiny functions. ORR's powers will be particularly focused on identifying and supporting early resolution of problems collaboratively and supporting Great British Railways to secure improvement. We propose to apply the existing information gathering powers which ORR has in respect of licence holders to Great British Railways as licensee

(including financial information and business planning documents) in the form they require as a regulator, and that ORR's current power to use independent reporters is retained.

## Directions and Guidance

- 3.28 A collaborative relationship, and an ongoing active process of dialogue between Great British Railways and government, to deliver change and improvement will be essential as priorities emerge. However, the Secretary of State will also have powers to set further requirements on Great British Railways separately from the licence, through Directions and Guidance. These will typically cover areas that may be more changeable or dynamic or which are not suitable for the licence, Business Plans or other existing instruments.
- 3.29 We propose that primary legislation should require Great British Railways to take account of Secretary of State Guidance and comply with Directions. Introducing these mechanisms will enable Great British Railways to be responsive to government priorities as it makes decisions. They are not designed to be used as tools for government to be drawn ever closer into operational matters. Ministers have made clear they will not as a rule be involved in such issues. A key principle is that Directions and Guidance will not be used to supersede or modify Great British Railways' obligations under its Licence, or conditions of funding. Directions and Guidance will work alongside the licence and other governance mechanisms as one coherent mandate for Great British Railways
- 3.30 Ahead of issuing any Directions and Guidance, we propose that the Secretary of State will usually, except in extenuating circumstances, seek advice and input from Great British Railways and ORR. Where there is likely to be a material impact on the Devolved Administrations, they will also be engaged. This process will be set out in the Framework Agreement and supporting documents. We propose that legislation should require the Secretary of State to publish all Directions and Guidance once issued. Where Directions or Guidance could have a material impact on areas within ORR's remit, ORR will publish a factual assessment of this impact.
- 3.31 Such parameters around the use of Directions and Guidance are necessary and important given this power has the potential to materially impact Great British Railways' ability to deliver agreed Business Plans within the funding settlement and recognising that these will have been subject to regulatory advice at the point the infrastructure funding settlement was agreed.

3.32 In monitoring compliance with the licence, ORR will also take into consideration any related Guidance or Directions issued to Great British Railways by the Secretary of State. If requested by the Secretary of State, ORR will be able to provide independent advice on how far Great British Railways is taking the Secretary of State issued Directions and Guidance into account when taking decisions.

**Questions:**

13. Does the proposed governance framework give Great British Railways the ability to act as a guiding mind for the railways, while also ensuring appropriate accountability? (paragraphs 3.13) Please explain.
14. Do you agree with the proposal for Great British Railways' new duties to 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? (paragraph 3.16) Please explain.
15. Do you support the proposal to amend ORR's powers to exclude the ability to impose a financial penalty on Great British Railways for licence breach? (paragraph 3.26) Please explain.

## **Business planning and funding process**

3.33 The Plan for Rail committed to creating a stable planning framework for Great British Railways, with Great British Railways being required to set out a business plan over a five-year planning horizon, covering services and infrastructure. This will enable Great British Railways to focus on planning activities on a whole system basis and provide the wider supply chain with some clarity on Great British Railways' planned activities.

3.34 Today's periodic review process enables Network Rail to plan key activities to manage Britain's railway infrastructure, supporting efficient delivery through a stable five-year planning process and supporting the supply chain. The periodic review agrees core elements of Network Rail's funding, such as funding from government (the Network Grant) and pricing framework for Access Charges (paid by freight and passenger train operators). It also agrees the outputs Network Rail will deliver over the subsequent five years. This process is managed by ORR, with structured input from the Secretary of State in relation to England and Wales (and on reserved matters), and Scottish Ministers for Scotland. It follows a process of detailed consultation and has been a key means by which governments' priorities for the railway have been secured. The ongoing Periodic review (PR23) will continue as planned and will be unaffected by these proposals.

- 3.35 However, infrastructure is just one component of the railway system. Levels of government funding for passenger services are set according to different timescales to the periodic review. Roles and responsibilities for track and train are currently split between multiple organisations across the sector. This means that there is no joined-up process for business planning. This fragmentation increases inefficiencies within the railway sector and leads to mis-aligned incentives, poor decision-making and missed opportunities for reducing costs.
- 3.36 To address this issue, key roles and responsibilities will be consolidated within Great British Railways, as set out in the Plan for Rail. Great British Railways will be required to produce an integrated Business Plan (across both infrastructure and passenger services) as part of the future periodic review process, engaging with operators and local partners as part of the process. The Business Plan will cover a five-year period, addressing expected activity and outputs across Great British Railways' remit. Infrastructure funding will be agreed as part of this process on a five-year funding basis, whilst the financial settlement for passenger services will be subject to separate funding processes through government fiscal events, as is the case today. Major enhancements will continue to be separately governed.
- 3.37 Current legislation for the periodic review process will be largely preserved for Great British Railways; as well as requiring Great British Railways to produce an integrated Business Plan, narrow changes may be required to improve information flow between government bodies ahead of and during the periodic review process.
- 3.38 The process for developing, agreeing, and amending a Business Plan will be supported by the Great British Railways Licence issued by Secretary of State. Formal agreements, such as Memoranda of Understanding, may also be put in place to support the process and wider governance structures. This will codify the roles of wider organisations, such as ORR, Department for Transport, and Transport Scotland in the Business Planning process.
- 3.39 As today, future periodic reviews will set infrastructure budgets for Great British Railways and Access Charges for the network. The Secretary of State and Scottish Ministers will each continue to issue their 'High-Level Output Specification' (HLOS) and 'Statement of Funds Available' (SoFA) during the periodic review process. This will provide Ministers with the opportunity to set clear objectives for what they want Great British Railways to deliver. The SoFA will, cover the level of funding available to Great British Railways over the five-year period to cover infrastructure operations, maintenance, and renewals.
- 3.40 As during today's periodic review process, ORR will consider whether the expected level of funding for infrastructure available to Great British Railways is sufficient to deliver the proposed activities. ORR's ability to make a declaration of a mismatch will provide a strong incentive for government funders to align the outputs specified with the funding provided. If a mismatch is declared, the relevant government funder(s) will be able to re-issue their HLOS or SoFA to address the imbalance. If

no such revisions to the HLOS or SoFA are made, ORR may determine how much of the outputs should be achieved by Great British Railways.

3.41 ORR will continue to have a key role in independently assessing the safety, performance, efficiency, deliverability, and long-term sustainability of the proposed plans. They will scrutinise the proposals from Great British Railways and publish their conclusions on the use of the five-year infrastructure settlement as part of the periodic review process. This will provide assurance to both Secretary of State and Scottish Ministers. Great British Railways will update their Business Plan reflecting ORR's conclusions. As today, the Secretary of State will be responsible for approving the Business Plan, following the conclusion of the periodic review.

3.42 Once agreed, Great British Railways will be accountable for the delivery of the five-year Business Plan and produce regular reports on progress against delivery. These business plans will develop 'in-life' to reflect multi-year operational budgets set through government's fiscal events, whilst preserving the five-year infrastructure settlement. A change control process will enable Great British Railways to respond to changing circumstances that materialise 'in-life', if required, whilst maintaining a stable planning framework. ORR will have an important role monitoring delivery (including publishing reports on performance) and assuring changes made to the Business Plan 'in-life' and providing advice to government funders on the implications of changes. Governance arrangements for the in-life monitoring and delivery of the Business Plan will be confirmed when the Plan is agreed.

**Question:**

16. Please provide any feedback on the proposed business planning arrangements for Great British Railways

## Independent Scrutiny and Challenge

3.43 As part of the overhaul of the sector's structures, Great British Railways will become a powerful guiding mind at the centre of the new, customer-focused system. In order to effectively hold it to account for meeting its obligations, organisations that provide independent scrutiny and challenge will also be reformed. This will enable Great British Railways to be independently supported and robustly scrutinised across priorities, including passenger experience, performance, efficiency and safety.

3.44 As the independent safety and economic regulator, ORR will continue to play a central role in the new rail system by providing whole-sector oversight that transparently holds Great British Railways and other railway businesses to account, encourages best practice and problem solving across the sector and uses its expertise and independent perspective to advise government.

- 3.45 Under the new system, this will include a continuation of ORR's monitoring and enforcement of licences. ORR will monitor and scrutinise Great British Railways' delivery of its objectives across the business against its Secretary of State-issued Licence and the Great British Railways Business Plan and in doing so, will give confidence that these objectives are being met. ORR will continue to have robust enforcement powers to take action if necessary, to require Great British Railways' compliance with its licence. ORR will continue to hold its central position in the periodic review process, including in assessing and advising on infrastructure funding and outputs, and assuring subsequent change to the plans.
- 3.46 As outlined in Chapter 2, ORR will continue to have independent regulatory oversight of the access framework including the ability to direct that access is granted. ORR will remain the competition authority for the railways being responsible for taking action on certain rail related competition law issues. As today, ORR will continue enforcing consumer protection law in relation to the railway to ensure that businesses are fair and open in their dealings with customers. ORR will also enforce railway licences, including all consumer-facing conditions. ORR is actively making preparations to take on sponsorship of the Rail Ombudsman, with the clear intention of doing so by early 2023. We will legislate to further strengthen ORR's ability to approve, establish or administer an ombudsman scheme and provide funding to the operator of such a scheme, reinforcing the ORR's role in relation to the Rail Ombudsman into the future.
- 3.47 Great British Railways will report transparently on its own delivery and the performance of the railway, ensuring its customers and interested parties can easily find out how the system is delivering. ORR will also play a key role in improving transparency, both by supporting Great British Railways to develop mature and open self-assurance processes, and by directly reporting on Great British Railways' delivery of objectives and publishing key information about the railway to help inform decision makers and stakeholders. ORR will continue to publish Official Statistics for the rail sector. To support them in delivering these functions, ORR will continue to hold broad information gathering and investigatory powers.
- 3.48 Ensuring that ORR is clearly and visibly independent from government promotes trust in the system and ensures that ORR can play its key role in holding Great British Railways to account effectively. To preserve ORR's independence in the new model and assuage any concerns that government could exert undue influence over ORR in the course of its duties, we propose to provide ORR with the statutory powers to levy a fee on Great British Railways to cover the costs of ORR's functions which are currently funded from the Network Rail licence fee, rather than these costs being directly funded by government. ORR already has similar powers to raise levies to fund its safety activities, and its regulation of some other networks.
- 3.49 ORR's role as health and safety regulator will continue across Great Britain, and its health and safety funding, and funding from sources other than Network Rail, will be unchanged. ORR's role in regulating other infrastructure managers, such as

Heathrow Airport Ltd or HS1, and ORR's parallel role as Highways Monitor, will not change.

3.50 Transport Focus will be reformed to become a passenger champion, this will include a watchdog function to provide further independent oversight. Further details on its new role are set out in Chapter 4.

**Questions:**

17. Will the proposed approach to independent scrutiny and challenge provide sufficient transparency and assurance that Great British Railways can be held to account? (paragraphs 3.45 – 3.47) Please explain.
  
18. Do you support the proposal to give ORR a statutory power to levy a fee on Great British Railways to cover the costs of ORR's functions which are currently funded through the network licence? (paragraph 3.48) Please explain.

## 4. Reform of Wider Industry Structures and Processes

### Introduction

4.1 In Chapter 2, we described core functions and duties of Great British Railways within the context of the new rail industry model. However, the establishment of Great British Railways in itself is not enough to bring about the change required to deliver the vision in the Williams-Shapps Plan for Rail ('Plan for Rail'). This part of the consultation focuses on the reforms to the wider rail industry needed to deliver reform. The chapter also details an additional measure we propose to include in primary legislation to ratify the Luxembourg Rail Protocol.

4.2 This chapter is structured as follows:

- **Transport Focus – A New Passenger Champion** – proposals to reform Transport Focus to create a new passenger champion for the rail industry
- **Improving Accessibility on the Railways** – how we propose to take forward the commitments in the Plan for Rail to improve accessibility
- **Promoting Open Data** – setting out proposals to move to an 'open by default' approach to rail industry data to support transparency and encourage private sector innovation
- **Ratification of the Luxembourg Rail Protocol**

### Transport Focus – A New Passenger Champion

4.3 The interests of passengers must be represented strongly in the new industry structure and the Plan for Rail committed to reforming Transport Focus' remit in rail to make it the passenger champion. Transport Focus is the independent watchdog for transport users and currently represents rail passengers in a range of ways:

- Through publishing and communicating research and survey information to understand passenger satisfaction and issues
- By taking on complaints that have not been satisfactorily dealt with by train operators; and which are beyond the scope of the Rail Ombudsman
- As a consultee on a range of industry issues
- Through public campaigning.

4.4 In the new rail industry model Great British Railways will be accountable for the 'customer offer' on its contracted services. The passenger champion role is in place principally to advise, monitor and help hold Great British Railways to account rather than to set or directly enforce policy. The emphasis for Transport Focus will be to work collaboratively with Great British Railways and Ministers to improve passenger experience through effective joint working.

4.5 Transport Focus will continue to represent passengers in England, Scotland and Wales. London TravelWatch will also retain their existing role in representing passengers with respect to services within the London railway area and in relation to Eurostar Services. Scottish and Welsh Ministers, and the London Assembly will retain their power to appoint board members to Transport Focus to ensure balanced representation. We are not proposing any changes to the duties and roles of Transport Focus relating to modes other than rail.

### Scope of the new passenger champion role for Transport Focus

4.6 Building on the Plan for Rail, in partnership with key stakeholders, we have further developed the proposed responsibilities of Transport Focus as the new passenger champion under four broad themes:

- **Passenger advocacy** - championing accessibility across all stages of the passenger journey, considering unresolved passenger complaints not covered by the Rail Ombudsman, ensuring the passenger (and non-passenger) voice is heard by Great British Railways and other contracting authorities and working with them to help resolve identified issues (while respecting the parameters of the agreed settlement and supporting good value for money).
- **Strategy development** – providing ministers and Great British Railways with advice on passenger priorities to feed into five-year business plans, holding Great British Railways to account through reporting to Secretary of State on how it is deploying its funding against passenger priorities, inputting on strategy development where this impacts on the customer experience, and ensuring greater focus on multi-modal whole journey thinking.
- **Monitoring** – engaging with passengers on their experience (adding value to work undertaken by Great British Railways and the Department for Transport), monitoring Great British Railways' performance in relation to passenger

experience, and monitoring passenger complaint volumes and themes<sup>5</sup>. ORR will continue to lead on the collection, monitoring and reporting of complaints data where it concerns regulatory compliance.

- **Passenger watchdog** – investigate matters relating to rail passengers and station services generally to understand whether commitments to passengers have been met, conduct investigations at the request of Secretary of State, on receipt of a complaint or proactively, and work closely with Great British Railways to address problems or pass the matter to ORR where necessary. Transport Focus will retain its ability to escalate issues to the Secretary of State or the relevant devolved authority for action where resolution cannot be reached.

4.7 Publicly available memoranda of understanding between Great British Railways and Transport Focus, and between ORR and Transport Focus, will be created in due course to help passengers and other stakeholders understand their respective individual and joint roles within the new structure. Transport Focus and the ORR will be expected to work closely on investigations and should not duplicate work. More generally, it will be essential for Transport Focus to have regard to ensuring that in conducting its investigations, it recognises the considerable taxpayer support provided to the railway and that its recommendations represent good value for money.

### Amendments to general duties of Transport Focus

4.8 Transport Focus currently has a duty to investigate matters relating to the provision of railway passenger services and the provision of station services by licensed station operators. Where appropriate, Transport Focus can make representations to the providers of these services, as well as prepare a report with its findings for the Secretary of State. Transport Focus also has a duty to keep matters affecting the public interest under review. We propose to amend section 76 of the Railways Act 1993 to ensure the duty to investigate will apply to all matters that affect passenger experience and enables Transport Focus to make representations to the organisations that will be providing services to passengers in future, including Great British Railways. We will amend wording across legislation that relates to Transport Focus, where required, to reflect the proposed new rail industry structure. The role and scope of London TravelWatch will not be subject to change.

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<sup>5</sup> To meet the aspiration in the Plan for Rail

**Question:**

19. Will the proposed changes enable Transport Focus to effectively undertake the role of independent passenger champion in the new rail industry structure? (paragraph 4.8) Please explain.

## Improving Accessibility on the Railways

4.9 While significant progress has been made to improve accessibility across the rail network in recent years, there are still several areas where improvements are needed<sup>6</sup> and the call for evidence submissions to the Williams Rail Review highlighted an ‘urgent need’ to improve accessibility<sup>7</sup>. Further work is also needed to ensure that disabled people and those with additional needs have the reliable information they need to use rail services. There needs to be a consistent level of customer service and a simple, effective process for addressing failures on the network.<sup>8</sup>

4.10 The new National Rail Accessibility Strategy will set out a plan to improve accessibility and ensure consistency across the network – identifying areas that need improvement and the mechanism to make this happen. Great British Railways Transition Team has already been commissioned to design and develop the Strategy in the transitional period and it will be consulted on separately. The Strategy forms part of a proposed package of accessibility reforms building upon the commitments in the Plan for Rail including:

- A new accessibility duty on Great British Railways (see paragraph 4.12 below)
- A statutory requirement for Great British Railways to consult with accessibility stakeholders (see paragraph 4.15 below)
- A National Accessible Travel Policy, as a successor to today’s Accessible Travel Policies (ATPs), that clearly sets out what passengers can expect when they travel on the railway.<sup>9</sup>We are currently developing this proposal, and the scope of the policy will be consulted on separately.

4.11 Our aim is to drive culture change in the rail industry to ensure that accessibility, the need for passengers to access the network as easily as possible, is not a ‘nice to have’ but is considered in everything that Great British Railways does.

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<sup>6</sup> [The Inclusive Transport Strategy: Achieving Equal Access for Disabled People \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/989328/williams-rail-review-call-for-evidence-summary-of-responses.pdf), pg. 14

<sup>7</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/989328/williams-rail-review-call-for-evidence-summary-of-responses.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/989328/williams-rail-review-call-for-evidence-summary-of-responses.pdf) pg. 8

<sup>8</sup> [The Inclusive Transport Strategy: Achieving Equal Access for Disabled People \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/989328/williams-rail-review-call-for-evidence-summary-of-responses.pdf), pg. 14

<sup>9</sup> <https://www.orr.gov.uk/monitoring-regulation/rail/passengers/passenger-assistance/atp>

## A new accessibility duty

- 4.12 The Plan for Rail commits to a new duty on Great British Railways to improve accessibility. This new 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 duty is in addition to the Public Sector Equality Duty (PSED), which will apply to Great British Railways.
- 4.13 As set out in Chapter 3, we are considering the best way to create this new duty and to meet the Plan for Rail's ambition. Our proposal as set out in paragraph 3.1, is to require that the statutory licence issued to Great British Railways by the Secretary of State includes an accessibility duty. It will be monitored and enforced by ORR, ensuring it is binding. Government will consult on the scope and content of the licence in due course.
- 4.14 Alongside the Secretary of State, ORR and Transport Focus will work closely together to secure improvements on the network. ORR will monitor Great British Railways' compliance with accessibility requirements in the Great British Railways Licence, as well as other operators' compliance with their licences. Transport Focus will work in close partnership with ORR, acting as a voice for disabled passengers and those with additional needs.

### **Question:**

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

## A statutory requirement for Great British Railways to consult with accessibility stakeholders

- 4.15 We propose that the role of the Disabled Persons Transport Advisory Committee (DPTAC) be expanded in primary legislation to become a statutory advisor to Great British Railways. Established by the Transport Act (1985), DPTAC is the statutory advisor to the government on matters relating to disability and transport. By acting as a critical friend and policy advisor, DPTAC has ensured accessibility is prioritised in the Department for Transport. We believe that DPTAC will have an equivalent, highly positive impact on Great British Railways.
- 4.16 We will also include a condition in the Great British Railways Licence to consult with disabled passengers and those with additional needs, directly and through representative organisations. Building a comprehensive understanding of the

passenger experience is integral to ensuring Great British Railways is able to make fully formed, evidenced-based decisions to improve the passenger offer.

**Question:**

21. Do you support the proposal to expand DPTAC'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? (paragraph 4.15) Please explain.

## Promoting Open Data

- 4.17 The Plan for Rail committed to an “open by default” approach to data sharing, in order to better inform journeys, improve transparency, unlock innovation and bring new entrants into the rail market. We want to harness the full potential of data to power the services of the future.
- 4.18 We are supporting the development of a new Rail Data Marketplace, where open rail data will be accessed by innovators to build new tools, and by app developers to deliver better real time information to passengers. A Digital and Data Services team, within Great British Railways, is being established to drive forward a new vision for open data in the rail sector.
- 4.19 Among its priorities, Great British Railways will need to make strategic decisions within its remit to promote open data in the interest of the public. To support this, we plan to extend to Great British Railways powers around information and data currently granted to the Secretary of State in section 145 of the Railways Act 1993. These decisions will require further open data sharing across the industry and its partners, to effectively collaborate and ensure efficient delivery of rail services that meet passengers' and freight customers' needs.
- 4.20 As a general rule, the Railways Act 1993 restricts disclosure of information about any business without the consent of the business concerned. However, there are some exceptions to this obligation, including for disclosures for the purpose of facilitating the Secretary of State's functions and ORR's functions. While information obtained by Great British Railways will be subject to the general confidentiality obligation, Great British Railways will be enabled to make permitted information disclosures for the purpose of carrying out its functions and activities, for example to act transparently in relation to the promotion of open data.
- 4.21 Great British Railways' functions will include developing and implementing an open data policy which will seek to publish data, while respecting existing legislative requirements for confidentiality. Future TOC contracts will be amended to require TOCs to acknowledge and cooperate with this policy. Great British Railways will also have an important role in publishing data and information about delivery and

railway outcomes so that stakeholders can transparently test progress and understand what is being achieved.

- 4.22 Whilst the Plan for Rail commits to an “open by default” approach to data sharing, 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 facilitate ongoing competition or where there are strong commercial reasons to keep data confidential. However, our clear commitment is to supporting making data available.

**Question:**

22. 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? Please explain.

## Ratification of the Luxembourg Rail Protocol

- 4.23 The UK signed the Luxembourg Rail Protocol (“the Protocol”) to the 2001 Cape Town Convention (“the Convention”) on International Interests in Mobile Equipment in 2016. There are three other Protocols under the Convention concerning various types and classes of mobile equipment (aircraft, space and mining assets). Currently, only the Aircraft Equipment Protocol is in force internationally.
- 4.24 The Protocol aims to reduce the cost of finance for rolling stock and leasing companies specifically by reducing the level of risk to creditors (i.e. private lenders or lessors) involved in these transactions. Operators often face challenges in raising finance for large, high-value mobile assets such as rolling stock given this often involves cross-border transactions with creditors financing assets across different jurisdictions. This leads to uncertainty for creditors and can translate into higher financing costs or barriers to securing finance for operators. The Luxembourg Protocol aims to address this by establishing a harmonised international legal framework for the creation and registration of international interests (similar to mortgages) in rolling stock, as well as legal remedies for default or insolvency. This will, therefore, increase the attractiveness and reduce the risk involved in privately financing railway rolling stock across borders.

4.25 The UK Government is committed to implementing and ratifying the Protocol in order to unlock greater levels of private finance in the railways, as well as supporting UK lenders in the rail sector to wind business overseas. To do so requires new legal powers to make secondary legislation to implement the terms of the Protocol. We therefore propose to include new powers within the legislation to enable the UK to give effect to its obligations under the Protocol via subsequent regulations. In line with the approach taken with other Protocols under the Cape Town Convention, the government plans to consult with industry in due course on the options for implementation as provided for in the Protocol, such as: the identification of assets, default remedies, remedies on insolvency, public service considerations and treatment of sales. This consultation will help inform the government's approach to the drafting of subsequent regulations.

**Question:**

23. Do you support the proposal to include a power in primary legislation to enable the ratification of the Luxembourg Rail Protocol? Please explain.

## 5. Conclusion

- 5.1 Our proposed legislative reforms are designed to enable the biggest change to the way rail is run in Britain in 30 years. They are targeted at giving Great British Railways the powers and authority it needs to act as the guiding mind for the railways and set up the whole railway system effectively and clearly.
- 5.2 This new system looks to embed a relentless focus on improving the railways for passengers, freight customers and taxpayers that subsidise the network, as well as the local communities that are served by rail. Clear lines of accountability, aligned incentives across track and train and clear duties, licence requirements and access rights will improve coordination and support customer-centred decision making.
- 5.3 To support this further, there needs to be transparency, openness and collaboration across the sector to make effective choices and balance difficult decisions against one another. This requires a significant culture change but will also be underpinned by amended duties for the regulator, government and passenger champion to hold Great British Railways and its partners to account.
- 5.4 It is essential that we set up the new system to enable the rail system to become more financially sustainable, efficient and deliver better, clearer outcomes for funders. This requires a new, long-term planning system that supports integration on the network and serves as a vital step to fully understanding how rail funding comes together and enabling appropriate balancing of funding between government and commercial income.
- 5.5 These proposals are a key step towards the establishment of a rail system that can fulfil the vision of the Williams-Shapps Plan for Rail. Without these legislative changes, it would be difficult to create the clear sector leadership, simple accountabilities, efficient delivery and robust monitoring needed to successfully deliver the outcomes set out in the white paper. Together with the Plan for Rail's other commitments, and the steps already underway as outlined in Chapter 1, they mark the start of a new era of simplification and customer focus on Britain's railways.

## For Passengers and Local Communities

- 5.6 These legislative proposals will enable us to set up the sector to focus on its customers, support local people and places more effectively and adapt to changing passenger priorities in a more responsive way than before.
- 5.7 Creating Great British Railways and a clear new customer-focused structure around it, underpinned by legislation, will unlock the Plan for Rail's call for a single organisation to be accountable for the customer offer.
- 5.8 Great British Railways will be empowered to work more effectively with local communities, businesses and other partners, in order to create clear local and nationally responsible leadership for passengers. This will be bolstered by the reformed role of Transport Focus as a passenger champion and the continued role of the Rail Ombudsman, with sponsorship moving from RDG to ORR.
- 5.9 Working together with innovative partners, including new operators and other commercial partners, Great British Railways will be able to realign the system to focus on delivering new ideas, improvements and a 'can do' culture that delivers for customers. We will end the fragmentation that held back operators, their suppliers and the infrastructure manager from being able to plan efficient, reliable services and deliver innovations and new skills that lead to better services for passengers, freight customers and local communities.
- 5.10 These legislative changes and our wider reforms also demonstrate how we are setting up the railways for long-term success. We are enshrining a real focus on accessibility in the new system, establishing an integrated, long-term approach to identifying, planning and funding improvements and transforming accessibility at every stage of a passenger's journey by enabling collaboration and alignment with innovators and other transport services. The accessibility duty we propose to include in the Great British Railways Licence will mark a new commitment to accessible rail travel.
- 5.11 As the Plan for Rail set out, environmental issues also require that long-term focus and integration that has been missing under the current system. These legislative changes will bolster the delivery of wider commitments made in the government's ground-breaking Transport Decarbonisation Plan. An environment duty on Great British Railways will ensure sustainability is integrated as part of decision making, planning and delivery. The Sustainable Rail Strategy, being developed by the rail industry as an input to the Whole Industry Strategic Plan, will bring the sector together to innovate, become more efficient and make real changes that improve the environment locally, nationally and reduce our global impact.
- 5.12 Our proposals to promote effective competition will also support improved information sharing across the sector and better planning across the network,

therefore enabling simpler, easier journey payments however passengers choose to pay for their travel.

## For Freight Operators and Customers

- 5.13 The Plan for Rail highlighted the critical importance of the economic and environmental benefits provided by rail freight, demonstrating government's commitment to supporting the rail freight sector, to enable it to grow and thrive. It has made a critical contribution to keeping goods moving during the pandemic and we are ambitious about its future success. The proposed legislative changes, alongside wider non-legislative commitments, will help to spur innovation, investment and growth by providing the long-term certainty that the freight industry needs to plan and succeed.
- 5.14 A duty to promote rail freight in the Great British Railways Licence will be complemented by a new rail freight growth target and government issued guidance on its priorities for rail freight in each funding settlement. The five-year funding settlement process for Great British Railways will set objectives for the funding period, including for freight. Great British Railways will be required to report on how it has fulfilled the duty to promote freight, as part of reporting in the Business Plan.
- 5.15 Our proposed package of targeted access reforms will enable Great British Railways to plan and manage access to the network in a joined-up way, while also maintaining key legislative protections that guarantee fairness and transparency for users of the railway, including rail freight operators. This builds upon the principles set out in the Plan for Rail to provide consistency and certainty to operators other than Great British Railways on the network and provide a fair, rules-based access system underpinned by legislation.
- 5.16 The Strategic Freight Unit in Great British Railways, which has already been established in interim form, will work collaboratively with the sector, ensuring a strong and systematic focus on freight, embedding these firmly and ensuring a strong freight voice in decision making.
- 5.17 Alongside this, the embedding of environmental principles in decision-making, long-term planning and the approach to the environment duty set out in this consultation will help to support long-term private investment in greener freight rolling stock and provide the certainty that investors and freight operating companies need to plan their businesses for decades to come.

## For Funders, Investors, Commercial Partners and the Taxpayer

- 5.18 One of the most significant failings of the previous, fragmented system was disconnected investment, planning and decision making. This created inefficiencies across the system that need to be gripped if rail is to become a more financially sustainable mode of transport and attract new funding sources.

- 5.19 The new railway will run as a public service with the financial discipline of a modern business. Great British Railways will be able to adapt more quickly, better equipping it to meet the challenges of the post-pandemic era and to react to changing customer needs. The costs of the railways will become more transparent and visible for government, taxpayers and investors.
- 5.20 Great British Railways will be designed through this legislation, its corporate setup, and other robust controls set out in the Plan for Rail, to be a public company with a strong commercial focus, designed to deliver savings, achieve more efficient services that attract new freight and passenger customers to the network.
- 5.21 Simplifying the structure of the sector and creating a single industry financial system will improve transparency over how spending is prioritised across the sector. This includes enabling Great British Railways to balance decision-making far more effectively than disparate funders and delivery bodies do today, with the intended result being simpler, more efficient investments to deliver clear outcomes for customers and taxpayers. The regulator and government will be better placed to monitor delivery of those outcomes than today.
- 5.22 Great British Railways will be strategic guiding-mind, making it much easier for private sector innovators to access opportunities – under the fragmented franchising structure, private sector suppliers and innovators struggled to know who to approach and break into the rail market. Additionally, the private sector was restricted by a rigid franchising schedule with many opportunities only becoming available at the beginning of franchises.
- 5.23 Strengthening the capability of the sector to develop and deliver long-term plans and programmes will also help improve certainty for funders and investors and support the government’s ambitions to bring in more private investment. This includes through more innovative contracting, as set out in the Plan for Rail. We continue to recognise the importance for the supply chain of a high quality, forward pipeline of investments, enhancements and major works in the new railway.
- 5.24 Rail matters and we are working to make it better for Britain. Please share your views.

## What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing on <https://www.gov.uk/government/consultations/williams-shapps-plan-for-rail-legislative-changes-to-implement-rail-reform>. Paper copies will be available on request.

If you have questions about this consultation please contact:

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## Annex A: Summary of Existing Legislation Governing the Railways

- A.1 This annex provides a brief overview of key elements of the core statutory framework governing the operation of the railways in the UK today. Particular focus is given to the key duties and functions of the Secretary of State for Transport and the Office of Rail and Road (“**ORR**”, as regulator).
- A.2 For the sake of brevity, this does not seek to cover every aspect of the legislation.

### **Railways Act 1993 (as amended, including by the 2005 Act) (the ‘1993 Act’)**

- A.3 The 1993 Act provided a framework for privatisation of aspects of the railway. Under privatisation, the assets and operations of British Rail were, in general terms, divided into two parts and transferred to the private sector. Those two parts comprised:
- **Infrastructure:** The national rail infrastructure (track, signalling, bridges, tunnels, stations and depots), which has been largely owned<sup>10</sup>, maintained and operated by Network Rail (an arms’ length body of the Department for Transport) since 2002.
  - **Rail Services:** freight operating companies (“**FOCs**”), rolling stock companies (“**ROSCOs**”) and passenger train operating companies (“**TOCs**”). FOCs and ROSCOs were sold separately. Passenger services were split into a number of separate operations and contracts let for the provision of franchised passenger services.

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<sup>10</sup> Network Rail’s ownership of the infrastructure is subject to some limited exceptions such as HS1 and Heathrow Express and the Core Valley Lines in South Wales.

A.4 The 1993 Act has been amended several times, most notably by the Transport Act 2000 and the Railways Act 2005. As amended, the 1993 Act contains most of the duties, powers and functions of the Secretary of State and ORR. These include:

- **General duties:** the 1993 Act sets out the general duties of ORR when exercising their statutory functions that are not safety functions. These include promoting improvements in railway service performance, contributing to the achievement of sustainable development, and promoting competition in the provision of railway services. ORR must also have regard to any general guidance given to it by the Secretary of State and to the interests of persons who are disabled.
- **Licensing of operators of railway assets<sup>11</sup>:** The Secretary of State and ORR may grant licences for the operation of railway assets (being a train, network, station, or light maintenance depot). Network Rail operates subject to such licences. The licence conditions are the key regulatory means through which Network Rail is held to account for its performance. It is a criminal offence to operate railway assets without a licence unless exempt.
- **Regulation of access<sup>12</sup>:** Access to railway facilities (such as track, stations, depots) is regulated by ORR who must approve access agreements before they are entered into – i.e. each passenger or freight operator will have one or more access agreements to enable them to gain access to the relevant track or other service facilities they need to operate. ORR can direct Network Rail, or another facility owner, to enter into an access contract with a passenger or freight operator enabling it to ensure that access is apportioned fairly where a particular facility is required by multiple train or freight operators.
- **Regulation of charges for access:** ORR also undertakes an “Access Charges Review” – otherwise known as a periodic review - to determine, in line with outputs and funding specified by the Secretary of State and Scottish Ministers, Network Rail’s requirements for each Control Period, the charges Network Rail can levy and the incentives required to encourage efficient delivery. ORR then oversees delivery of those outputs by Network Rail.
- **Franchising of passenger services:** the 1993 Act introduced rail franchising. Under these provisions franchising authorities let contracts for the provision of passenger services. TOCs are selected following a competition process or through a direct award undertaken in accordance with the requirements set out in Regulation 1370/2007 (see below). The form of Contract has evolved over time and under the current model the TOC is required to provide specified passenger services and meet defined targets including ones relating to customer satisfaction, reliability and punctuality.

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<sup>11</sup> See Sections 6-8 of the 1993 Act.

<sup>12</sup> Section 17 of the 1993 Act.

A.5 The 1993 Act also sets out certain duties as they apply to the Secretary of State and relating to such things as the licencing of railway entities, access to the network, closures, and modifications to the networks.

### **The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the ‘Access and Management Regulations’)**

A.6 The Access and Management Regulations govern entitlement to access the necessary railway infrastructure and service facilities. The provisions broadly set out:

- How access is allocated, managed, and charged for,
- Infrastructure managers’ responsibilities, and
- Appeals to ORR.

A.7 The Access and Management Regulations in their current form stem from the UK’s EU membership and were prepared in the context of furthering the so called Single European Railway Area by harmonising the requirements and processes governing access and charging on the EU’s railway system and its regulation. The Access and Management Regulations were retained in the UK’s legislation at the end of the transition period following the UK’s exit from the EU<sup>13</sup>. They are supported by a number of implementing regulations and delegated decisions.

### **Regulation (EC) 1370/2007**

A.8 Regulation 1370/2007<sup>14</sup> was a directly applicable EU Regulation that became “retained EU law” on the UK’s exit from the EU. It provides for a bespoke procurement and state aid/subsidy regime for “public service contracts”, in recognition that such contracts are needed in the general interest of the public and cannot be operated on an entirely commercial basis (i.e. they may not otherwise be profitable in their own right).

A.9 Passenger rail contracts let using the powers under the 1993 Act are considered as “public service contracts” for these purposes. Regulation 1370/2007 takes these agreements outside of the mainstream procurement and state aid rules and sets out special rules for such agreements.

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<sup>13</sup> The 2016 Regulations were amended by The Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019 (SI 2019/518) and by The Railways (Safety, Access, Management and Interoperability) (Miscellaneous Amendments and Transitional Provision (EU Exit) Regulations 2019 (SI 2019/1310)

<sup>14</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (O.J. No. L 315, 3.12.2007, p. 1, as amended by Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016 (O.J. No. L 354, 23.12.2016, p. 22)).

A.10 In summary, under Regulation 1370/2007:

- public service contracts must be competed unless Articles 5(5)/ 5(6) apply.
- Article 5(5) permits a direct award of up to 2 years as an emergency measure “in the event of a disruption of services or the immediate risk of such a situation”.
- Until 25 December 2023, Article 5(6) permits direct awards of up to 10 years subject to prior publication of a notice on the competent authority’s website, at least 1 year before entry into the contract.
- where a direct award is made, the Annex to the Regulation must be applied. This is intended to demonstrate that no overcompensation is being paid to the operator where the process to the award the contract has not involved a procurement competition.

A.11 Regulation 1370/2007 was retained as direct EU legislation by section 3 of the European Union (Withdrawal Act) 2018<sup>15</sup>.

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<sup>15</sup> Amendments have been made to remove certain deficiencies, arising out of the UK’s leaving the European Union. Otherwise the legislative framework for the award of “public service contracts” as it had existed under EU law has been preserved.

## Annex B: Full list of consultation questions

### Question 1

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? (paragraph 2.6) Please explain.

### Question 2

Are there any other factors Great British Railways should balance and consider as part of its public interest duty? (paragraph 2.9) Please explain.

### Question 3

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? (paragraph 2.17) Please explain.

### Question 4

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? (paragraph 2.18) Please explain.

### Question 5

Do you support the proposed amendments to Regulation 1370/2007, which are i) reducing the limitation period for the challenge remedy, ii) introducing a remedy of recovery to accord with the new UK subsidy regime, iii) clarifying who may bring a claim, iv) retaining

the ability to make direct awards under Article 5(6), and v) clarifying the PIN notice period? (paragraph 2.20) Please explain.

### **Question 6**

Do you support the proposed statutory duty on ORR to facilitate the furtherance of Great British Railways' policies on matters of access and use of the railway, where these have received Secretary of State approval? (paragraph 2.38) Please explain.

### **Question 7**

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? (paragraph 2.44) Please explain.

### **Question 8**

Do you agree with the proposed recasting of ORR's competition duty to better reflect public sector funding? (paragraph 2.49) Please explain.

### **Question 9**

Do you support the proposal to include in legislation, a power for Great British Railways to issue directions to its contracted operators to collaborate with one another in circumstances where doing so could otherwise give rise to concerns under Chapter I of the Competition Act 1998, in particular, where this could lead to defined benefits to taxpayers and/or passengers? (paragraph 2.54)

### **Question 10**

Would Train Operating Companies be willing to share information and collaborate in the way envisaged without the proposed legislative provisions? What are the risks to them without the proposed legislation? Would the proposed legislative approach help to resolve these risks?

### **Question 11**

Are there any particular additional safeguards (in addition to the safeguards outlined in paragraphs 2.54 - 2.55) that you consider necessary to support the interests of third parties (including freight, open access and charter operators) or to otherwise protect passengers and/or taxpayers?

### Question 12

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? (paragraph 2.61) Please explain.

### Question 13

Does the proposed governance framework give Great British Railways the ability to act as a guiding mind for the railways, while also ensuring appropriate accountability? (paragraphs 3.13) Please explain.

### Question 14

Do you agree with the proposal for Great British Railways' new duties to 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? (paragraph 3.16) Please explain.

### Question 15

Do you support the proposal to amend ORR's powers to exclude the ability to impose a financial penalty on Great British Railways for licence breach? (paragraph 3.26) Please explain.

### Question 16

Please provide any feedback on the proposed business planning arrangements for Great British Railways.

### Question 17

Will the proposed approach to independent scrutiny and challenge provide sufficient transparency and assurance that Great British Railways can be held to account? (paragraphs 3.45 – 3.47) Please explain.

### Question 18

Do you support the proposal to give ORR a statutory power to levy a fee on Great British Railways to cover the costs of ORR's functions which are currently funded through the network licence? (paragraph 3.48) Please explain.

### **Question 19**

Will the proposed changes enable Transport Focus to effectively undertake the role of independent passenger champion in the new rail industry structure? (paragraph 4.8) Please explain.

### **Question 20**

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

### **Question 21**

Do you support the proposal to expand DPTAC'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? (paragraph 4.15) Please explain.

### **Question 22**

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? Please explain.

### **Question 23**

Do you support the proposal to include a power in primary legislation to enable the ratification of the Luxembourg Rail Protocol? Please explain.

### **Question 24 (see Impact Assessments)**

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

### **Question 25 (see Impact Assessments)**

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

## Annex C: Consultation principles

The consultation is being conducted in line with the government's key consultation principles which are listed below. Further information is available at <https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator  
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