

RAIL REFORM BILL

EXPLANATORY NOTES

What these notes do

- These Explanatory Notes relate to the draft Rail Reform Bill to be scrutinised via pre-legislative scrutiny by the Transport Select Committee. These Explanatory Notes have been prepared by the Department for Transport, in order to assist the reader of the Bill and to help inform scrutiny and debate on it. They do not form part of the draft Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the draft Rail Reform Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the draft Rail Reform Bill will affect existing legislation in this area.
- These Explanatory Notes should be read alongside the draft Rail Reform Bill. They are not, and are not intended to be, a comprehensive description of the draft Rail Reform Bill.

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Overview of the Bill

- 1 The draft Rail Reform Bill comprises 19 clauses and three schedules. The draft Rail Reform Bill will amend the Railways Act 1993, the Greater London Authority Act 1999, the Railway (Licensing of Railway Undertakings) Regulations 2005, and the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016. It makes the necessary legislative reforms to bring about reform of the rail sector, revising the role and functions of the Secretary of State and enabling the new IRB to be established. The Bill enables the transfer of some of the franchising authority functions from the Secretary of State to the IRB (to combine with the infrastructure manager function) and makes other changes to facilitate and support this core reform.
- 2 [The reforms enabled by this Bill will require provision to allow the Secretary of State to make one or more transfer schemes for the transfer of property, rights and liabilities to or from certain specified persons, including an IRB, a proposed IRB and a former IRB. This provision is subject to ongoing development, and for this reason does not appear in the Bill for the purpose of pre-legislative scrutiny. Provision for this will be included should this draft Bill be formally introduced in a future parliamentary session.]

Policy background

- 3 Following the Williams Rail Review in September 2018 led by independent Chair Keith Williams, the government published the Plan for Rail (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994603/gbr-williams-shapps-plan-for-rail.pdf) in May 2021. This proposal set out the rationale for primary legislation to enable the envisioned reform.
- 4 The Bill brings together the primary legislative measures required to deliver rail reform envisaged by the Plan for Rail. The legislative measures and policy intent were publicly consulted on in June 2022 ([Williams-Shapps Plan for Rail: consultation on legislation to implement rail transformation \(web version\) \(publishing.service.gov.uk\)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994603/gbr-williams-shapps-plan-for-rail.pdf)). The government plans to publish the government response to the consultation alongside the draft Bill.
- 5 Given the scale and complexity of the changes being made to the sector, it is right that the draft Bill undergoes pre-legislative scrutiny to provide Parliamentarians and experts across industry the opportunity to review and test the legislation in draft. This will allow for a swifter passage through Parliament when the legislation is brought forward.
- 6 The relevant legal background is explained in the policy background and in the commentary on individual provisions of the Bill as set out later in these notes.

Territorial extent and application

- 7 With the exception set out in the following paragraph (as well as Extent, Commencement and Short Title provisions), the extent of the Rail Reform Bill is limited to Great Britain, as transport is a devolved matter in Northern Ireland. The Devolved Administrations in Scotland

and Wales have a range of devolved powers in relation to rail which concern the procurement of rail passenger services, the funding of infrastructure (Scotland) and the ownership of devolved infrastructure (Wales). The IRB will need to work together with the Scottish and Welsh governments to deliver a co-ordinated rail network across Great Britain.

- 8 This Bill also seeks to give the Secretary of State for Transport the legal power to implement the Cape Town Convention (in relation to rail vehicles) and the Luxembourg Rail Protocol which relate specifically to rail vehicles in the United Kingdom. This provision engages the legislative consent process in Northern Ireland only. The Minister for Infrastructure in Northern Ireland confirmed in a letter dated 29 June 2022 that the proposals to implement the Luxembourg Protocol will have no impact on Northern Ireland.
- 9 The table in Annex A summarises the position regarding territorial extent and application in the United Kingdom. A Legislative Consent Motion will be sought from the Scottish Parliament and Senedd Cymru for clause 3.

Commentary on provisions of Bill

Chapter 1: The Integrated Rail Body

Policy Background

1. The Plan for Rail white paper envisages that an IRB will be established as the strategic decision-making body for railways in Great Britain. The IRB will be responsible for exercising the functions of both a franchising authority and an infrastructure manager and will be required to fulfil a range of functions and duties through its network licence.
2. It is the government's intention that Network Rail Infrastructure Limited (NRIL), the Network Rail company that currently carries out the infrastructure management function, will be designated as the IRB. New franchising and strategic functions that the IRB is to undertake will be transferred to this company.
3. The IRB will be licenced under section 8 of the Railways Act 1993, as NRIL is today. NRIL's current licence will be revoked and replaced by a new licence issued under section 8 by the Secretary of State.

Clause 1: The IRB

4. Clause 1 makes amendments to the Railways Act 1993. These amendments allow for the creation of a new rail body, the IRB, as both the franchising authority and infrastructure manager for the rail network.
 - a. 4A: The IRB
 - i. New subsection 4A (1) allows the Secretary of State to designate a "body corporate" as the new rail body through secondary legislation. The term "body corporate" refers to any company registered under the Companies Act 2006.
 - ii. New subsections 4A (3) to 4A (6) refer to the IRB's relationship to the Crown. They explain that the IRB will not be a Crown body. The IRB will not have the immunity nor privileges that a Crown body would have, nor will the property of the IRB be considered Crown property. The IRB's staff will not be civil servants nor Crown employees.
 - b. 4B: Business Plan
 - i. This new section 1 places an obligation on the IRB to produce and publish an integrated business plan which includes all activities for which they will be responsible. This includes (but is not limited to) the management of the operation, maintenance and renewal of existing railway infrastructure, infrastructure enhancement activity as authorised by the Secretary of State, and passenger services. Section 4B also allows the IRB to revise the integrated business plan and requires that each revision is published.

- ii. Section 4B also contains a requirement for the IRB to have regard to how its activities will impact businesses in the private sector when preparing or revising its business plan.
 - iii. The integrated business plan will provide the Office of Rail and Road (ORR) with a tool for monitoring the IRB's activities against its outputs agreed alongside and during the existing periodic review process as set out in Schedule 4A of the Railways Act 1993. The overall aim of this amendment is to secure in legislation an integrated business plan which is an expression of the IRB as the strategic decision-making body for the railways, and publication of the plan will require the IRB to be transparent about its activities and provide greater certainty for industry.
- c. 4C: Annual report on private sector involvement
- i. This section requires the IRB to prepare an annual report setting out what it has done to increase private sector involvement in the running of railway services during the previous financial year.
 - ii. This report must be published and a copy sent to the Secretary of State, as soon as practically possible, after the end of the financial year. The first 'financial year' will begin once the Secretary of State designates (via regulations) a body corporate as the Integrated Rail Body, ending with the following 31 March. Each subsequent 'financial year' will be a period of one year, ending on 31 March.
- d. 4D: Directions and Guidance
- i. New section 4D allows the Secretary of State to direct or guide the IRB in the way it carries out its functions. Subsection 4D (2) says that a direction could be used to restrict the IRB to exercise a specific function only after consultation or with the express consent of the Secretary of State.
 - ii. The Secretary of State already has powers to give directions. Section 144 of the Railways Act 1993 makes such directions binding, provides for them to be enforced via civil proceedings, and requires them to be in writing. The Act specifies when directions may be used, including in cases of emergencies and to protect assets and associated persons from acts of violence. New section 4D widens the power to direct to encompass all of the IRB's functions.
 - iii. The IRB must comply with any directions and have regard to any guidance when exercising its functions. The Secretary of State must publish all directions and guidance in a way he considers appropriate.
- e. 4E: Levy
- i. This section gives the ORR a new statutory power to require the IRB to pay a levy to cover ORR's costs incurred in carrying out its railway functions (except its safety functions).

- ii. This levy will replace the fee currently levied on Network Rail under its network licence, which funds the majority of ORR's non-safety railway functions.
 - iii. The levy will provide ORR with a guaranteed funding source that is independent of any condition of the IRB's licence used by the Secretary of State, preserving ORR's independence.
 - iv. ORR will be responsible for setting the amount for the levy, the period for which the levy is payable, and how and when payments are to be made.
- f. 4F: Shadow Directors
- i. The Secretary of State already has some protection against the risk of being regarded as a shadow director of the new rail body under section 251 of the Companies Act 2006 and section 114 of the Railways Act 1993. New subsection 4F (1) adds an additional layer of protection, expressly stating that the Secretary of State is not a shadow director of the IRB.
 - ii. New subsection 4F (2) gives the IRB protection against the risk of being considered as a shadow director of a franchisee or an operator providing services under section 30 of the Railways Act 1993.
- g. Sub-clause 1(4) introduces Schedule 1 which makes provision for the licensing of the IRB.

Chapter 2: Franchising etc.

Clause 2: Franchising and related matters

5. The IRB will become the appropriate franchising authority in relation to all franchise agreements where the franchising authority is not the Scottish Ministers or the Welsh Ministers. This role was previously held by the Secretary of State for the Department for Transport. Clause 2 and schedule 2 will enable the transfer of these franchising functions.
6. Clause 2 of this Bill will ensure that the relevant parts of the definitions of an "appropriate franchising authority" and "franchise agreement" refer to the IRB instead of the Secretary of State. These definitions can be found in subsection 3, section 23 of the Railways Act 1993.
7. Under the Railways Act 1993, the appropriate franchising authority has powers to select successful bids from train operating companies to become franchisees, enter into franchise agreements and carry out other functions related to franchising.
8. Franchise agreements refer to agreements between the appropriate franchising authority and another party, where the other party undertakes to provide (or secure that a wholly owned subsidiary will provide) services for the carriage of passengers by railway for a set term, subject to specific terms of the agreement.
9. Schedule 2 of this Bill contains amendments to existing legislation which are necessary to

enable the transfer of functions from the Secretary of State to the IRB.

Clause 3: Franchising functions of Scottish Ministers and Welsh Ministers

10. Section 71C enables the Scottish Ministers and the Welsh Ministers to enter into an agreement with the IRB whereby the IRB can exercise on their behalf some or all of Scottish or Welsh Ministers' functions. Before exercising this power, the Ministers must consult those persons listed in subsection (2).
11. The terms of the delegation, including any variation or revocation, need to be agreed with the Secretary of State and the IRB. It is anticipated that any such agreement will need to include provisions which cover the extent of the delegation, how it can be varied, the circumstances in which it will be terminated and the consequences of termination.
12. Subsection (6) defines those franchising responsibilities which can be delegated.

Chapter 3: The Office of Rail and Road

Clause 4: General duties of the Office of Rail and Road

13. Section 4 of the Railways Act 1993 describes the general duties of the Secretary of State and the ORR. Subsection (1)(d) requires the ORR to exercise its functions in a manner that promotes competition in rail services, for the benefit of users.
14. Clause 4 amends this duty to require the regulator to balance the promotion of competition with a consideration of the cost, to public funds, of providing passenger services.
15. Subsection 4(5) of the Railways Act 1993 contains provisions requiring the ORR to have regard to certain guidance and other matters when exercising its functions in providing independent regulatory oversight of the access framework.
16. Clause 4 amends subsection 4(5) by imposing a new duty on the ORR to have regard to any access policy statement published by the IRB and approved by the Secretary of State.
17. An access policy statement is defined as a statement of the IRB's policy about the granting of access to or use of the network it operates; this may include capacity allocation, timetabling, performance monitoring and operational rules. Any such policy statements will apply only to parts of the railway network which the IRB is responsible for managing.
18. The purpose of this duty is to ensure that the ORR gives appropriate weight to policy decisions made by the IRB regarding the best use of the network.
19. This new duty does not take precedence over the regulator's other duties in Section 4 of the Railways Act 1993. The ORR will be required to balance this duty alongside its other duties.

Clause 5: Review of access charges by the Office of Rail and Road

20. Clause 5 introduces Schedule 3, which makes changes to Schedule 4A of the Railways Act 1993.
21. Section 4A of the Railways Act 1993 sets out the process for a review of access charges by the ORR. This process is also referred to as the periodic review and is the legislative process by which funding for railway infrastructure maintenance, operations, and renewals is determined. Schedule 3 amends Schedule 4A to reflect the fact that the IRB will also be the infrastructure manager.

Clause 6: Rail dispute resolution scheme

22. Clause 6 makes express provision for a licence issued under the Railways Act 1993 or the Railway (Licensing of Railway Undertakings) Regulations 2005 to include a condition requiring the licence holder to participate in a dispute resolution scheme established by the ORR and gives the ORR the power to modify existing licences issued under the Railways Act 1993 and conditions in a statement of national regulatory provisions ('SNRP') made under the Railway (Licensing of Railway Undertakings) Regulations 2005, to include such a condition.

Chapter 4: Authorisation, access and management

Clause 7: Amendments of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016

23. Clause 7 makes the following amendments to The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the 2016 Regulations). These amendments enable the IRB to become an infrastructure manager under the definition of the Regulations 2016, as well as a franchising authority as enabled in Clause 2 of this Bill.
 - a. (Paragraph 2): A new definition is added to the 2016 Regulations to enable clear referencing of the IRB, as defined in the Railways Act 1993 following amendment by this legislation. This allows the IRB to be identified in the 2016 Regulations.
 - b. (Paragraph 3 and 5): The amendments in Paragraphs 3 and 5 exempt the IRB from regulations 14(9) and 19(4) in the 2016 Regulations. meaning that the IRB will not be required to keep the functions of charging and/or capacity allocation in separate bodies independent from the IRB in their organisation, decision-making, or legal form. This is because charging and capacity allocation are functions that the infrastructure manager is responsible for under the 2016 Regulations and cannot be held by an infrastructure manager who works closely with railway operators or has railway operator functions.
 - c. However, following other amendments in this Bill, the IRB will be an infrastructure manager and a franchising authority. Therefore, these exemptions for the IRB will enable a close cooperation between the IRB and any railway operator (including both freight and passenger services) without the IRB being obliged to keep charging and capacity allocation functions in a separate body.
 - d. (Paragraph 4): Clause 7(4) amends regulation 16 to exempt the IRB and railway operators running services on behalf of the IRB from the requirements to make payments as part of performance schemes set out in the Regulations 2016. Even with this exemption the IRB and its franchised railway operators will still need to make payments under the performance schemes in the Regulations 2016 to other parties, such as open access operators.

- e. This amendment therefore enables the IRB to set out incentives for performance between the IRB and its franchised railway operators under arrangements other than the performance schemes payments in the 2016 Regulations. Operational performance and other incentives are expected to be part of agreements between the IRB and its associated railway operators. This will enable the IRB to handle incentives on performance as a franchising authority without creating a parallel, and potentially contradictory or conflicting scheme, to the performance scheme required under the 2016 Regulations.
- f. The IRB and its associated railway operators will be exempt only from payments to each other after this amendment. All other requirements on performance schemes in regulation 16 and Schedule 3(7) will apply to them. This will include factors such as attributing the cause of delay across the system under the codes in the 2016 Regulations and being part of the performance scheme system.

Clause 8: Railway transport services: authorisation, access and management

- 24. This clause introduces a delegated power for the Secretary of State to make provisions for and in relation to rail markets, by regulations. These regulations are to be made by statutory instrument using the affirmative procedure.
- 25. Rail markets legislation covers the function of the various markets that are part of the rail market. The scope of the delegated power includes the role and functions of bodies managing the railway network, other facilities for trains and train services and their interactions with regard to access and charging, as well as enforcement provisions. The making of provisions related to rail markets legislation encompasses any matter that is currently in the Railway (Licensing of Railway Undertakings) Regulations 2005, the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 and any assimilated law made under Directive 2012/34/EU, clause 8(7).
- 26. Clause 8(11) defines infrastructure operators, public authorities, railway infrastructure, train services and train services operator for the purpose of the delegated power. These definitions ensure that the power can be exercised without the terminology in the Railways Act 1993 or in the existing secondary railway market legislation that covers the bodies, roles and functions in the rail markets.
- 27. Clause 8(1)(a) and 8(2)(a) confers a power on the Secretary of State to make regulations related to the authorisation to run train services and in particular to prevent a person from operating train services unless authorised in accordance with the regulations. The current authorisations legislation for a person to operate trains services are found in the Railway (Licensing of Railway Undertakings) Regulations 2005 and in the Railways Act 1993.
- 28. The making of regulations in relation to the operation of and access to railway infrastructure, the management of train service operators and infrastructure operators and the promotion of competition of the rail services markets may, in particular, include regulations on access to the infrastructure and the independence between train services operators and infrastructure operators, pursuant to clause 8(1)(b)-(d) and 8(2)(b) and (c). The making of regulations on access to the infrastructure may make provisions for the infrastructure operator to make schemes, or enter into arrangements, relating to the conditions on which access to the infrastructure is to be made available.

29. Clause 8(4) provides for the making of regulations on charges for access to the infrastructure in relation to conditions for access to the infrastructure under clause 8(3)(a) and the requirements for payments between infrastructure operators and trains service operators for the purpose of improving the efficiency of the railway network under clause 8(4)(b).

Chapter 5: Rail passengers

Clause 9: The Passengers' Council

30. This clause makes amendments to section 76 of the Railways Act 1993, which contains the general duties of the Passengers' Council ("the Council"). The purpose of the Council is to represent the interests of passengers.
31. Section 76 sets out the general duties and functions of the Passengers' Council. There is no change to the existing functions of the Council regarding investigation of railway passenger services or station services.
32. New subsection (4) widens the group of persons or bodies to which representations can be made. The amendment will enable the Council to make presentations to the persons or body appropriate to resolve matter and this will include the IRB. An amendment at subsection 4(c) and the omission of subsection (5A) will remove the requirement for the Secretary of State to direct matters to the ORR, in the case of licence contraventions; the Passengers' Council will now be able to make direct representations to the ORR. The new subsection 7 removes the reference to the omitted subsection (5A).
33. Section 76(6)(a) will be amended to include Scottish Ministers and the IRB in the list of bodies to whom the Passengers' Council may send a report of its investigation findings.

Clause 10: London Transport Users' Committee

34. The London Transport Users' Committee ("the Committee") is the statutory transport watchdog for matters within London.
35. Section 252C of the Greater London Authority Act 1999 describes the actions that the Committee must take following an investigation of a matter. This clause will make amendments to section 252C, to ensure that the existing legislation reflects the new role of the IRB.
36. Clause 12 ensures that the Committee's abilities mirror that of the Passengers' Council. The substitution for subsection 3 of section 252C enables the Committee to refer licensee contraventions directly to the ORR, whereas it previously could only refer matters to the Secretary of State (who could then choose to refer matters to the ORR).
37. Section 252C is also amended such that, following an investigation, if the Committee is unable to obtain a satisfactory resolution, they may choose to refer a matter to the Secretary of State, rather than being required to do so. This reduces the number of obligations on the Committee.
38. Clause 10 also amends the requirement to refer a contravention (or likely contravention) of a franchise agreement to not only the Secretary of State but also to the appropriate franchising

authority. This acknowledges that the appropriate franchising authority could be the IRB, the Scottish Ministers or the Welsh Ministers.

Clause 11: The Disabled Persons Transport Advisory Committee

39. Section 125 of the Transport Act 1985 provides for the establishment of the [Disabled Persons Transport Advisory Committee](#) (DPTAC) as an independent body. DPTAC is an expert committee, founded to advise government on matters relating to disability and transport. The chairman and members of DPTAC are appointed by the Secretary of State and at least half of the members must identify as disabled.
40. DPTAC's primary role is provided for in section 125(5) of the Transport Act 1985. Subsection (5) requires DPTAC to advise the government on the transport needs of disabled people. This advice is provided either on a matter referred to DPTAC by the Secretary of State or on a matter that DPTAC considers appropriate.
41. This clause amends section 125(5) of the Transport Act 1985, to expand DPTAC's role. The amended provision places a duty on DPTAC to formally advise the IRB, mirroring DPTAC's duty to the Secretary of State established in the Transport Act 1985. This amendment does not change DPTAC's existing duty to the Secretary of State.

Clause 12: Minor Amendments

42. This clause makes minor amendments to existing legislation (the Public Records Act 1958 and the Public Bodies Act 2011) to ensure it uses the correct terminology for the London Transport Users' Committee and the Passengers' Council.

Chapter 6: Miscellaneous

43. [Clause 13: Electronic service of documents](#)

44. Section 149 of the Railways Act 1993 sets out requirements for how documents referred to in the Act should be delivered (e.g. if a document is to be "given" or "served", it must be delivered or posted to the recipient's proper address). This is amended to allow for the recognition of electronic documents and defines when such an electronic notice can be considered as served (the working day following the day it was sent).

Clause 14: Repeal and revocation of spent and unnecessary provisions

45. This clause repeals and revokes provisions in section 136 of the Railways Act 1993 which are no longer relevant, given other amendments to legislation that have taken place, for example: the enactment of the Public Service Obligations in Transport Regulations 2023 (revoking the Railways (Public Service Obligations) Regulations 2010 (S.I. 2010/402) and Regulation (EC) No 1370/2007 of the European Parliament and of the Council); and the repeal of Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings.

Chapter 7: International interests in railway rolling stock

Policy Background

46. The UK signed the Luxembourg Rail Protocol (“the Protocol”) to the 2001 Cape Town Convention¹ on International Interests in Mobile Equipment in 2016, but, due to the loss of the powers under the European Communities Act 1972 following the UK’s departure from the European Union, and subsequently due to pressures on parliamentary time, has not as yet been able to implement and ratify the Protocol. There are four Protocols under the Convention concerning different types of mobile equipment: rolling stock, aircraft, space and mining assets. Currently, only the Aircraft Equipment Protocol² is in force internationally.
47. The problem which the Protocol seeks to address is the significant level of risk associated with financing rolling stock given the limited means by which lessors of rolling stock can recover debts, should the lessee of the rolling stock fall into insolvency. This is a particular problem with regard to rolling stock which crosses borders (i.e. where it is used in international services) or where financing arrangements take place across jurisdictions. At present, lessors would have to register interests (such as mortgages and leases) separately in each jurisdiction in question, which often provide different levels of protection, and in some jurisdictions it may not be possible to register interests or enforce protections at all. This significant level of risk in turn increases the cost of financing rolling stock and acts as a barrier to investment in, and development of the sector, leading to lower availability of financing, higher financing costs, or both. The cost of financing rolling stock is currently a significant cost in infrastructure projects and for transport operators.
48. The Protocol aims to reduce the level of risk involved in, and subsequently to reduce the costs associated with, financing rolling stock. The Protocol will do this by establishing an international legal framework for the creation and registration of international interests in rolling stock, as well as legal remedies for default and insolvency. Companies may choose to register interests (and therefore to take advantage of the protections provided by the Protocol) on a voluntary basis, meaning there are no mandatory requirements to enter into leasing or financing arrangements under the terms of the Protocol.
49. Once the Protocol comes into force globally (currently expected by early 2024), and is implemented in the UK, it will increase the attractiveness of the UK rail market for financing and leasing companies. As the Protocol is ratified by more countries, it will also increase the attractiveness of other rail markets for UK-based manufacturers and exporters by reducing risk and increasing the availability of financing options.
50. The Government intends to implement the Protocol given the benefits it can provide for UK-based companies seeking financing, as well as those wishing to participate in the financing of rolling stock overseas. The powers in this Bill enable the Government to make the necessary secondary legislation to implement the terms of the Protocol and subsequently ratify it under the Constitutional Reform and Governance (CRAG) Act 2010.

Clause 15: Convention and Protocol relating to international interests in railway rolling stock

51. Clause 15 gives the Secretary of State the power to implement the Cape Town Convention (so far as it relates to railway rolling stock), and the Luxembourg Rail Protocol by regulations. The regulations will be subject to the affirmative resolution procedure.

- a. subsection (2) sets out in detail provision that may be made in those regulations to implement the Cape Town Convention (as it relates to railway rolling stock) and the Luxembourg Protocol.
- b. subsection (3) requires the Secretary of State to consult who the Secretary of State thinks appropriate before making the regulations under this Clause.
- c. subsection (6) provides for definitions applicable to this section for "international interest", "modify", "primary legislation" and "railway rolling stock".

Clause 16: Power to make consequential provision

- 52. Clause 16 allows the Secretary of State to make such consequential changes as are necessary in order to bring the reforms anticipated by the Bill into effect, and to make supplementary, incidental, transitional and saving provisions, as well as different provision for different purposes, ensuring the smooth hand-over of franchising responsibilities from the Secretary of State to the IRB.
- 53. This power permits the amendment or revocation of primary legislation, meaning it is a "Henry VIII" power. As such, it is subject to the affirmative resolution procedure, insofar as the amendments relate to primary legislation, but subject to the negative resolution procedure with respect to all other amendments.

Clause 17: Extent

- 54. Please see 'Territorial extent and application' section of these explanatory notes.

Clause 18: Commencement

- 55. With the exception of clauses required to enable relevant powers to be available, which come into force on Royal Assent, the provisions of the Bill will be commenced by statutory instrument. The commencement order may include transitional and savings provisions, and make different provision for different purposes or areas (see paragraphs 18(3) and (4) of the Bill). For further detail, please see 'Commencement' section of these explanatory notes.

Clause 19: Short title

- 56. This clause is self-explanatory.

Schedule 1: Licensing of the IRB

57. This Schedule makes a number of amendments to Part 1 of the Railways Act 1993.
58. Paragraph 2 inserts new subsection (9A) into section 7. It is an offence under the Railways Act 1993 to operate a railway asset without a licence unless an exemption has been granted by the Secretary of State under section 7. Given a range of the IRB's core obligations will be set out in its network licence, the IRB should never be exempt from holding a network licence. The Secretary of State will retain the exemption power for other bodies that might require a network licence and for other railway assets that the IRB might require a licence to operate.
59. Paragraph 3 inserts new subsections (1A) and (6A) into section 8. Subsection 1A will mean only the Secretary of State can grant a network licence to the IRB. Subsection 6A will mean only the Secretary of State can agree to terminate the IRB's network licence. The ORR will not be able to grant or terminate the IRB's network licence but can continue to grant licences to other bodies or grant other types of licences to the IRB.
60. Paragraph 4 inserts new subsection (3B) into section 9. This allows the network licence to include conditions relating to any of the functions of the IRB. In particular it requires the network licence to include specific conditions in relation to freight, accessibility, the environment and social and economic benefit.
61. Paragraph 5 amends section 11(2)(a). This amendment allows a network licence held by the IRB to be assigned with the consent of the Secretary of State.
62. Paragraph 6 inserts new section 12A to enable the Secretary of State to amend the conditions of the IRB's network licence. It specifies the steps the Secretary of State must take to modify the network licence. These include requirements for the Secretary of State to give notice before making modifications to the licence, to set out why modifications are proposed, and to provide at least 28 days (from the date of publication of the notice) for interested parties to make representations or objections to the proposed modifications.
63. The ORR will continue to be able to amend the IRB's network licence with the consent of the IRB. This will continue to require a notice period of no less than 28 days, during which interested parties may make representations or objections with respect to the proposed modifications.
64. Paragraph 7 inserts new subsection (7A) to remove the ability of the ORR to refer matters to the Competition and Markets Authority (CMA) for the purpose of directly modifying the IRB licence without consultation. As the Secretary of State will be the authority on whether the terms of the IRB licence are in the public interest and will be able to directly amend the IRB licence, the CMA's separate supervisory role is no longer necessary. The ORR will retain the ability to refer matters to the CMA for other licence holders.
65. Paragraph 8 amends section 83(1) to make it clear that a network licence granted to the IRB can also authorise the IRB to operate railway assets other than those directly connected with the operation of a railway network (e.g., stations, depots and trains).

Schedule 2: Franchising and related matters

66. As per Clause 2 of this Bill, the IRB will become the appropriate franchising authority in relation to all franchise agreements where the appropriate franchising authority is not Scottish Ministers or Welsh Ministers. Schedule 2 will make amendments to several existing Acts to reflect the IRB's and Secretary of State's revised roles in the rail regulatory landscape. These include the Transport Act 1985, the Railways Act 1993, the Railways Heritage Act 1996, the Greater London Authority Act 1999, the Transport Act 2000, and the Railways Act 2005.

Transport Act 1985

67. Paragraph 1 of Schedule 2 will substitute reference to the Secretary of State with the IRB in section 6 of the Transport Act 1985. Section 6 of the Transport Act 1985 provides that certain local services must be registered unless they fall within exempted categories. The exempted categories include services that are provided under an agreement entered into with the Secretary of State, Scottish Ministers or National Assembly for Wales under section 40 of the Railways Act 2005 (Substitute Road Services). Paragraph 1 will amend section 6(1) of the Transport Act 1985 to reflect the IRB's assumption of the power contained in section 40 of the Railways Act 2005 from the Secretary of State to enable IRB to secure substitute bus services for certain services. This amendment will ensure that section 40 agreements with the IRB are exempted from the registration requirements of section 6 of the Transport Act 1985.

Railways Act 1993

68. Section 4(4) of the Railways Act 1993 will be omitted. This section relates to the general duties of the Secretary of State and the ORR and gives the Secretary of State a duty when exercising certain functions to promote the award of franchise agreements to companies in which certain qualifying railway employees have a substantial interest. This duty will be removed given the potential conflict with wider procurement law principles on ensuring equal treatment for all bidders.
69. Section 18, subsection (6A)(b) of the Railways Act 1993 will be amended to substitute "Secretary of State" with "IRB". This subsection relates to the requirement for ORR to approve track access agreements. It states that the ORR can reject or approve with modifications a proposed access contract if it considers the access agreement might impede services provided under a franchise agreement or services being provided under an agreement the Secretary of State entered into pursuant to his duty under section 30 of the Railways Act 1993. As the Secretary of State's section 30 duty will be transferred to the IRB (see paragraph [9]), the amendment in paragraph 4 will ensure that section 18 refers to the IRB, instead of the Secretary of State.
70. Section 26 of the Railways Act 1993 relates to invitations to tender for franchises. This section will enable the appropriate franchising authority to invite entities to tender, if they are suitable, and to select which franchisee to award a franchise agreement and contains certain related provisions that will govern how this should be done.
71. Paragraph 5 of this Schedule will amend section 26 of the Railways Act 1993 to reflect the fact that the IRB will be taking over certain Secretary of State franchising functions. It will insert a requirement in section 26 for the Secretary of State to publish a policy statement on how the

IRB should exercise its section 26 power regarding tendering and selecting franchisees. Currently, the Secretary of State is required to publish a policy statement on how he proposes to exercise his power regarding tendering and selecting franchises. This requirement will be updated to require the Secretary of State instead to produce a section 26 policy statement that the IRB must have regard to when exercising its section 26 power. The Act will state that this Secretary of State policy statement must, in particular, include (a) when it is likely that a franchisee will be selected by a tender process, (b) when it is likely there will not be a tender process, and (c) how a franchisee will be selected in the absence of a tender process. The Act will not amend the role or responsibilities of Scottish and Welsh Ministers in relation to Section 26 of the Railways Act 1993.

72. Section 27 of the Railways Act 1993 relates to the transfer of franchise assets and shares and contains various provisions designed to protect franchise assets. For example, this section provides that the responsible authority has a responsibility, prior to entering a franchise agreement, to ensure the franchisee (or its subsidiary) holds the relevant assets needed to operate a franchise. This section will be amended to ensure the relevant obligations of the responsible authority (where the responsible authority is not Scottish or Welsh Ministers) will sit with the IRB instead of the Secretary of State, as the IRB is assuming certain Secretary of State's franchising authority functions. The responsibilities of the Scottish and Welsh Ministers under section 27 will not be changed.
73. Section 30(1) of the Railways Act 1993 ensures that the relevant franchising authority has an obligation to provide, or secure the provision of, services for the carriage of passengers by railway where a franchise agreement is terminated or otherwise comes to an end without a replacement franchise agreement in place. Section 30(3) sets out the circumstances in which the relevant franchising authority is not required to secure the provision of services. This Bill will amend section 30 to reflect the fact that the IRB will take over the Secretary of State's Section 30 duty and franchising authority functions.
74. Section 50 of the Railways Act 1993 provides that the Secretary of State, the Welsh Ministers and the Scottish Ministers will not have any liability under civil proceedings for breach of statutory duty in relation to obligations imposed under Part I of the Railways Act 1993 to secure the provision of railway services or the operation of any additional railway assets. This Bill will extend the exclusion of liability to the IRB, as the IRB will become a franchising authority.
75. Section 54 of the Railways Act 1993 provides that the appropriate franchising authority when exercising (or deciding to exercise) certain defined franchising functions may take into consideration the desirability of encouraging railway investment, and exercise franchising functions for that purpose. The appropriate franchising authority can enter into agreements under which an undertaking is given to exercise (or not exercise) their franchise functions. Section 54 will be amended to ensure that references to the Secretary of State are replaced with reference to the IRB, who will take over the Secretary of State's franchising functions specified in section 54 and will also become the counterparty to the relevant franchise agreements. The definition of "franchising functions" in the section will also be updated to ensure that it refers to the correct IRB franchising functions as not all franchising functions listed in the current definition of "franchising functions" will transfer to the IRB.
76. Sections 55 – 58 of the Railways Act 1993 provide the statutory enforcement framework for the Railways Act 1993.

77. Section 55 of the Railways Act 1993 relates to orders for securing compliance where an operator contravenes, or is likely to contravene, its licence, franchise agreement or (for persons under closure restrictions) certain duties imposed under the Railways Act 2005 (“Section 55 Orders”). This section will be amended to reflect the fact that the IRB will take over certain Secretary of State’s franchising functions. Therefore, it will need to become an “appropriate authority” for the Railways Act 1993 statutory enforcement regime in relation to contraventions of certain franchise agreements. The Secretary of State will remain the appropriate authority in relation to persons under closure restrictions (as defined in section 55(11) of the Railways Act 1993) where the appropriate authority is not Scottish or Welsh ministers. Paragraphs 10(2) to (6) and (7) and paragraph 12 of this schedule contain various amendments that will amend section 55 and 57A to implement this change.
78. Section 55(7A) will not be amended so penalties imposed by the IRB will be payable to the Secretary of State. The Act also does not amend section 55(7B) of the Railways Act. This means that the Secretary of State will retain the power to make Orders by statutory instrument that outlines how turnover should be determined for the purposes of section 55(7B).
79. Section 56 of the Railways Act 1993 sets out the procedural requirements for Section 55 Orders. It includes a requirement to notify certain persons (including the operator who may be subject to the Section 55 Order) that the relevant authority is proposing to make (or confirm) a Section 55 Order so that representations or objections can be made. Section 56(2A) requires the ORR to serve copies of any such section 56(1) notice, served on a licence holder, to the Secretary of State, Scottish Ministers and the Welsh Ministers. This requirement will be amended to require: a) a copy of any such notice served on the IRB, to be copied to the Secretary of State, Scottish Ministers and the Welsh Ministers; and b) a notice served on any other licence holder, to be copied to the IRB, the Scottish Ministers and the Welsh Minister.
80. Section 57B of the Railways Act 1993 requires each appropriate authority to publish a policy statement with respect to the imposition of penalties; it also requires that the authority undertake appropriate consultation when preparing, altering or replacing a statement of policy. This Bill will ensure these requirements apply to the IRB and requires the IRB to consider the Secretary of State’s statement of policy in respect of contraventions occurring before the IRB has published its statement of policy under section 57B of the Railways Act 1993.
81. Section 57C of the Railways Act 1993 relates to the procedural requirements for penalties. This section will be expanded by paragraph 14 of this Schedule to ensure that, when the ORR serves a copy of the notice under section 57C(1) of the Railways Act 1993 on a franchisee or a franchise operator who is party to a franchise agreement, it must also serve a copy on the IRB and any other party to the franchise agreement, alongside the existing requirement to serve copies of notices to the Scottish or Welsh Ministers.
82. Section 73 of the Railways Act 1993 contains an obligation for the Secretary of State to keep a register of certain categories of information relevant to its Railways Act 1993 functions. Schedule 2, paragraph 15 of this Bill will remove the need for the Secretary of State to keep copies of every franchise agreement (and amendments to those agreements) given these documents will instead be kept by the IRB when it becomes the relevant franchising authority (see paragraph [20] below). This paragraph will also amend section 73 of the Railways Act 1993 to give the IRB the right to inspect (and to request copies of /extracts from) the Secretary of State’s register of information.

83. This Bill will insert a new section 73ZA of the Railways Act 1993. This will create a new obligation on the IRB to maintain a register of information of certain categories of information relevant to the IRB's Railways Act 1993 functions. These categories will be outlined by section 73ZA(3) and relate to the IRB's franchising functions. The terms for how the IRB should maintain and provide access to the register will be broadly the same as the terms for the register of information that the Secretary of State is required to keep in section 73 of the Railways Act 1993. The new section 73ZA of the Railways Act 1993 will include an obligation on the IRB to provide access to or copies of the register to the Secretary of State, Scottish Ministers or Welsh Ministers or the ORR.
84. This Bill will amend Sections 73A and 73B of the Railways Act 1993 to reflect the fact that the IRB is taking over the Secretary of State's franchising functions. These Railways Act 1993 provisions relate to register of information kept by the Scottish Ministers and Welsh Ministers.
85. Section 135 of the Railways Act 1993 relates to concessionary travel for Railway Staff and provides that the Secretary of State and Scottish Ministers can promote provision of staff concessionary travel and enter into agreements for that purpose. This section will be amended to ensure it also applies to the IRB.
86. Section 136 is amended to add the IRB to a list of 'competent authorities' in relation to passenger service operators for the purposes of the public service obligations regulations. The public service obligations are retained EU law regulations, which (amongst other matters) allow the competent authority to award contracts that relate to public passenger transport services by rail and by road. This list already includes the Secretary of State, Scottish Ministers, Welsh Ministers, Passenger Transport Executives and certain specified councils. This amendment is needed to ensure that the IRB can carry out its new franchising functions.
87. Section 145 of the Railways Act 1993 contains various provisions that govern how information obtained under or by virtue of the Railways Act 1993 should be treated. Paragraph 21 will update this section to reflect the new role of the IRB. Section 145(2) contains exceptions to the general obligation to keep certain categories of information obtained under the Railways Act 1993 confidential. These exemptions include where disclosure is made for the purpose of facilitating the carrying out by the Secretary of State, Welsh Ministers, Scottish Ministers, the ORR, or the Competition and Markets Authority of certain functions. This Bill will extend the exceptions to the IRB in relation to certain specified IRB functions, including any functions conferred or imposed on the IRB under or by virtue of any licence under section 8 of the Railways Act 1993. The exceptions are not intended, however, to permit IRB to disclose information that it has collected in the course of its functions as an infrastructure manager except as currently allowed by regulation 44 of the Regulations 2016 (that is, it will not be permitted to disclose information collected as infrastructure manager in a way that could adversely affect the commercial position of open access passenger services, operators operating under devolved franchises and freight services), nor behaviour which would otherwise be contrary to any provision of the Competition Act 1998.

Railways Heritage Act 1996

88. Section 1 of the Railways Heritage Act 1996 lists the bodies to which that Act applies. This Bill will insert the IRB and any company wholly owned by the IRB to this list.

Greater London Authority Act 1999

89. Section 175(1) of the Greater London Authority Act 1999 puts a duty on Transport for London and the Secretary of State to cooperate with one another in the exercise and performance of their respective functions for certain specified purposes (the “**Section 175 Co-operation Duty**”). This Bill will amend section 175(1) of the Greater London Authority Act 1999 to include the IRB in this cooperation duty and reflect the fact that the IRB will take over the Secretary of State’s franchising functions.
90. Subsection 1A of Section 175 of the Greater London Authority Act 1999 puts a requirement on the Secretary of State to consult Transport for London before issuing an invitation to tender (“ITT”) for (or, where no ITT is issued, entering into) franchise agreements for services which are or include London railway passenger services. The Bill will substitute the Secretary of State for the IRB in this section. Subsection 1B of Section 175 of the Greater London Authority Act 1999 also puts an obligation on each party to provide the other with any information reasonably required to satisfy the section 175(1) cooperation duty (provided the information can be lawfully disclosed). The information sharing obligation will apply to the IRB as well as the Secretary of State in this section to facilitate the cooperation duty in section 175(1).
91. Subsection 2 of Section 175 of the Greater London Authority Act 1999 allows, for purposes of satisfying the Section 175 Co-operation Duty, Transport for London and the Secretary of State to enter into arrangements with one another with respect to the exercise and performance of their respective functions. This Bill will extend this provision to the IRB.
92. This Bill will amend subsection 2A of Section 175 of the Greater London Authority Act 1999 to add the IRB to this subsection. This will enable relevant parties to make arrangements under which sums become due from Transport for London to the Secretary of State or the IRB for London railway passenger services, station services or bus substitution services.
93. Subsection 3 of Section 175 of the Greater London Authority Act 1999 outlines the functions of the Secretary of State that subsection 1 and 2 of section 175 of the Greater London Authority Act 1999 refer to. This Bill will update this subsection to reflect the changes made to the Secretary of State’s functions by this Bill and to include the relevant functions of the IRB.
94. Subsection 3 of Section 179 of the Greater London Authority Act 1999 defines services which are not London local services for the purpose of the Greater London Authority Act 1999. It specifies that services provided in pursuance of an agreement with the Secretary of State entered into under section 40 of the Railways Act 2005 (substitution services provided for interrupted or discontinued railway services) are not London local services. This Bill will substitute references to the Secretary of State for the IRB to reflect the fact the IRB is taking over the Secretary of State’s functions under section 40 of the Railways Act 2005 and will provide that the IRB has the same meaning as in part 1 of the Railways Act 1993.

Transport Act 2000

95. Section 134E of the Transport Act 2000 relates to the making of an advanced ticketing scheme under section 134C of the Transport Act 2000. This Bill will add the IRB as a body with which local transport authorities entering into such a scheme must give notice to in certain circumstances. This reflects the fact the IRB is taking over the relevant Secretary of State’s

franchising function. It will also amend the obligation to give notice to the Secretary of State to reflect the changes made to its functions under this Bill.

96. Section 137 of the Transport Act 2000 relates to ticketing schemes set up by local transport authorities under section 135 of the Transport Act 2000. This Bill will insert the IRB as a body to which the local transport authority must give notice of the making of a ticketing scheme in certain circumstances. This reflects the fact the IRB will take over the relevant Secretary of State's franchising function. It also will amend the obligation to give notice to the Secretary of State to reflect the changes made to its functions under this Bill.
97. Section 248 of the Transport Act 2000 imposes an obligation to ensure that any road services that are provided in substitution for railway services during periods of rail disruption are such as to allow disabled passengers to undertake their journeys in safety and reasonable comfort. This applies where the provision of such services is secured by the Secretary of State amongst others. This Bill will substitute the Secretary of State for the IRB to reflect the fact the IRB is taking over the Secretary of State's functions that are relevant to this provision.

Railways Act 2005

98. Section 10 of the Railways Act 2005 relates to franchising and financial assistance in Wales. This Bill will amend section 10(1) of the Railways Act 2006 to require the IRB (as opposed to the Secretary of State) to consult Welsh Ministers before issuing an ITT for a franchise agreement (or, where no ITT has been issued, entering into a franchise agreement) which includes Welsh services.
99. Section 10 (6) of the Railways Act 2005 is amended to replace the reference to Secretary of State with IRB. This reflects that the IRB will now be the authority (alongside Scottish Ministers) that can offer support to Welsh Ministers in carrying out the section 30 duty of the Railways Act 1993 (procuring services in the absence of a franchise) and may receive payment from Welsh Ministers for doing so.
100. Section 12 of the Railways Act 2005 relates to transfer schemes at the end of franchising agreements. This Bill will amend this section to add the IRB to the list of persons who can make a transfer scheme under section 12 of the Railways Act 2005 to the IRB to reflect the IRB's new franchising functions.
101. This Bill will insert a new section 12A into the Railways Act 2005. This section will allow the appropriate national authority to make a transfer scheme where a services agreement made in accordance with section 30 of the Railways Act 1993 comes to an end. The new provision will broadly replicate the provisions in section 12 of the Railways Act 2005 (see the preceding paragraph for further information).
102. Section 13 of the Railways Act 2005 relates to the function of Passenger Transport Executives (PTEs). It provides (amongst other things) that the Secretary of State must consult a PTE before issuing an ITT for (or, where no ITT is issued, before entering) a franchise agreement the includes services in which a PTE for an area in England has an interest. Section 13 of the Railways Act 2006 also contains various other provisions that relate to the railway functions of PTEs, such as it specifies certain arrangements the PTE can enter into and the terms on which it can do so. This section will be amended by this Bill replacing references to Secretary of State to the IRB to reflect the transfer of certain franchising functions contained in this Bill.

103. Section 22 – 24 of the Railways Act 2005 set out the statutory procedures to be followed for proposals to discontinue certain railway passenger services, or the closure of passenger networks or stations. There are different processes, depending on the type of operator and whether it is services, a network or a station which is to be closed. All sections are amended in broadly the same way to reflect the fact that the IRB will take over certain franchising functions from the Secretary of State. The sections now provide that where the Secretary of State is the relevant national authority, the IRB will be responsible for securing the provision of the relevant services. Section 25 of the Railways Act 2005 contains the regime for a proposal to discontinue certain excluded services (i.e. services that are not relevant railway passenger service for the purposes of any of sections 22(1), 23(1) and 24(1) of the Railways Act 2005 or an experimental passenger service (defined in section 45 of the Railways Act 2005)). Section 25 will not be amended.
104. Section 33(2) of the Railways Act 2005 allows the ORR to impose appropriate requirements on relevant bodies when it issues a closure ratification notice. This Bill will expand this list of relevant bodies to include the IRB.
105. Section 34 of the Railways Act 2005 requires the Secretary of State, Scottish Ministers, or Welsh Ministers to determine whether a closure is considered a minor modification and so not subject to main closure procedures. This Bill will amend 34(3) to give the IRB the power to determine this instead of Secretary of State. Scottish Ministers and Welsh Ministers retain this power. This Bill will also provide for the addition of subsection 34(7A), which requires the IRB to consult the Secretary of State prior to making or revoking a minor modification determination.
106. Section 36 of the Railways Act 2005 relates to the designation of experimental passenger services. Although infrequently used, this has been used in the past to introduce new services on a temporary basis, and any such services are subject to a lighter touch closure process than other services. Previously, the power to designate a service as experimental was held by Scottish Ministers, Welsh Ministers, and the Secretary of State. This Bill will amend this section to replace references to the Secretary of State with the IRB. This Bill will also require the IRB to consult the Secretary of State prior to designating a service as experimental.
107. Section 40 of the Railways Act 2005 relates to substitute road services where a railway passenger service is temporarily interrupted or has been discontinued. This section will be revised to ensure the Secretary of State's power to secure provision of certain substitute bus services is transferred to the IRB. Scottish Ministers and Welsh Ministers retain this power, where appropriate.
108. Section 45(1) of the Railways Act 2005 will be amended to change the definition of a "secured service", by substituting the IRB for Secretary of State in the list of bodies that provide the relevant secured services. This amendment will reflect the fact that the IRB will take over responsibility for the provision of certain services from the Secretary of State.
109. Section 52 of the Railways Act 2005 relates to the duty of Passenger Transport Executives (PTE) to advise the Secretary of State. The revised section will ensure that PTEs must provide advice to both the Secretary of State and the IRB, when requested, in certain circumstances. This revised provision could be used to request advice on how changes in the local rail network can be made to best reflect local priorities. For example, this could include value for money assessments of how resources spent on rail in the PTE's area could be best allocated.

110. Schedule 10 of the Railways Act 2005 relates to taxation provision relating to transfer schemes made under section 1(2) of the Railways Act 2005. This will be amended to include references to the new section 12A inserted by this Bill (see paragraph 101 above) where there is an existing reference to section 12. It will also be amended to refer to the IRB instead of Secretary of State in paragraph 32 of Schedule 10 of the Railways Act 2005 to reflect the fact the IRB will take over the relevant Secretary of State function referred to in that paragraph.

Schedule 3: Review of access charges by the Office of Rail and Road

111. Schedule 4A of the Railways Act 1993 sets out the process for a review of access charges by the ORR. This process is also referred to as the periodic review and is the legislative process by which funding for railway infrastructure maintenance, operations, and renewals is determined. As the infrastructure manager, Schedule 4A will apply to the IRB.

112. Schedule 4A requires the Secretary of State and Scottish Ministers to set their priorities for the railway network, and to set out the grant funding that they will make available to support these activities. These documents are known as the High-Level Output Specification ('HLOS') and the Statement of Funds Available ('SoFA') respectively. Schedule 3 will make the following changes to Schedule 4A.

- a. (Paragraph 2): This amendment would clarify existing legislation to allow ORR to set different dates for the Secretary of State and Scottish Ministers to return their HLOS and SoFA. The content of Scottish Ministers' HLOS and SoFA is dependent on the funding settlement (for transport) between Westminster and Scotland which is agreed at the same time the Secretary of State prepares their HLOS and SoFA. Therefore, it is impractical for Scottish Ministers and the Secretary of State to provide their HLOS and SoFA at the same time. The aim of this change is to provide more flexibility to ORR and bring legislation in line with current practice.
- b. (Paragraph 3): This amendment would introduce a requirement for ORR to consult the Secretary of State and Scottish Ministers before the formal commencement of the periodic review regarding the scope of that review. This allows the Secretary of State and Scottish Ministers to provide strategic guidance to the ORR on what they, as funders of the periodic review, regard as priorities for the review. The ORR is able to set the deadline for these representations and can extend the deadline if they wish.
- c. (Paragraph 4, 5, 6, 7, 8, 9, 10, 11, 12, 13): These amendments establish a requirement for key information relevant to the IRB's business planning process to be shared with the IRB during the periodic review process. The kinds of information shared includes the representations made to the ORR on the scope of the periodic review, mismatches between the HLOS and the SoFA, and notices received by the ORR from the Competition and Markets Authority. This change helps to ensure that the IRB is informed about the information exchanged during the periodic review for the purposes of the IRB's own planning and participation in the review's processes and compliance with the final determination of the review.

Commencement

113. The Bill proposes that all provisions will come into force by regulations made by the Secretary

of State, save for sections 1 (the IRB), for the purposes of making regulations under section 4A of the Railways Act 1993, 8 (railway transport services: authorisation, access and management), 14 (repeal and revocation of spent and unnecessary provisions), 15 (Convention and Protocol relating to international interests in railway rolling stock), 16 (power to make consequential provision), 17 (extent), 18 (commencement), and 19 (short title), which will come into force on the day which the Bill is passed as an Act.

114. Commencement regulations will be made by the Secretary of State by statutory instrument and may include transitional or saving provision in connection with the coming into force of any provision of the Bill, and may provide different provision for different purposes or areas.

Financial implications of the Bill

115. The establishment of the IRB is expected to deliver net savings to the government of £575m over the seven-year appraisal period, compared with a do-nothing scenario. The savings of £957m over this period are offset by costs of £381m. Further savings from the Bill would accrue in the longer term, as well as a range of non-monetised benefits such as improved passenger experience.

116. These financial costs and benefits are not exhaustive, and there is substantial uncertainty associated with the figures presented, which are subject to change. The figures are based on early-stage policy and may not fully reflect changes to the proposals through the policy development cycle.

117. Spending Review 2021 allocated £205m to begin the mobilisation of the IRB between 2022/23 and 2024/25. Costs for later years will be agreed in subsequent Spending Reviews. The final cost of establishing the IRB will be confirmed in the Full Business Case.

118. The proposals in the Bill do not have any direct tax implications.

Parliamentary approval for financial costs or for charges imposed

119. N/A

Compatibility with the European Convention on Human Rights

120. The Government considers that the Rail Reform Bill is compatible with the European Convention on Human Rights ('ECHR').

Compatibility with the Environment Act 2021

121. The Rail Minister is of the view that the draft Rail Reform Bill as introduced for the purpose of pre-legislative scrutiny, contains one provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Such provision will not have the effect of reducing the level of environmental protection provided for by any existing environmental law. In accordance with that section, the Rail Minister will make a statement to this effect when the draft Rail Reform Bill is formally introduced to either the House of Commons or Lords.

Related documents

122. The following documents are relevant to the Rail Reform Bill and can be read at the stated locations:

- Plan for Rail, [Great British Railways \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/92422/gbr-plan-for-rail.pdf)
- Consultation on Legislation, [Plan for Rail: consultation on legislation to implement rail transformation \(web version\) \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/92422/plan-for-rail-consultation-on-legislation-to-implement-rail-transformation-web-version.pdf)
- Government response to consultation

Annex A - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	Yes	No	No	No
Clause 2	Yes	In part	No	In part	No	No	No
Clause 3	Yes	Yes	Yes	Yes	Yes	No	No
Clause 4	Yes	Yes	No	Yes	No	No	No
Clause 5	Yes	Yes	No	Yes	No	No	No
Clause 6	Yes	Yes	No	Yes	No	No	No
Clause 7	Yes	Yes	No	Yes	No	No	No
Clause 8	Yes	Yes	No	Yes	No	No	No
Clause 9	Yes	Yes	No	Yes	No	No	No
Clause 10	Yes	Yes	No	Yes	No	No	No
Clause 11	Yes	Yes	No	Yes	No	No	No
Clause 12	Yes	Yes	No	Yes	No	No	No
Clause 13	Yes	Yes	No	Yes	No	No	No
Clause 14	Yes	Yes	No	Yes	No	No	No
Clause 15	Yes	Yes	No	Yes	No	Yes	Yes
Clause 16	Yes	Yes	No	Yes	No	No	No
Clause 17	Yes	Yes	No	Yes	No	Yes	No
Clause 18	Yes	Yes	No	Yes	No	Yes	No
Clause 19	Yes	Yes	No	Yes	No	Yes	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Schedules							
Schedule 1	Yes	Yes	No	Yes	No	No	No
Schedule 2	Yes	Yes	No	Yes	No	No	No
Schedule 3	Yes	Yes	No	Yes	No	No	No

Subject matter and legislative competence of devolved legislatures

1. In the opinion of the UK government, in respect of all provisions in the Bill, except clause 15 (Convention and Protocol relating to international interests in railway rolling stock)¹, the subject matter of the Bill is not within the legislative competence of any of the devolved administrations because its provisions relate to reserved subject matters under Schedule 5 of the Scotland Act 1998 and Schedule 7A of the Government of Wales Act 2006, and do not apply in Northern Ireland.
2. In the opinion of the UK Government the subject matter of clause 15 (Convention and Protocol relating to international interests in railway rolling stock) is within the legislative competence of the Northern Ireland Assembly because the exception for “observing and implementing international obligations” that relate to devolved matters applies (paragraph 3(c) of Schedule 2 (Excepted Matters) to the Northern Ireland Act 1998).
3. In the opinion of the UK Government, one other provision of the Bill engages the LCM process in the Scottish Parliament and the Senedd Cymru because it alters the executive competence of the Scottish Minister the Welsh Ministers, as follows:
 - a. Clause 3 of the Bill introduces a new section 71C into the Railways Act 1993, which provides powers for the Scottish Ministers and the Welsh Ministers to delegate their respective franchising functions to the IRB. The purpose of the additional power is to allow the Scottish and Welsh franchising authorities, to permit the IRB to award

¹ To note: clauses 17 (extent), 18 (commencement) and 19 (short title) also extend to Northern Ireland in order to effect clause 15 (Convention and Protocol relating to international interests in railway rolling stock).

franchise agreements on their behalf, should they so wish, taking advantage of the IRB's position as an established infrastructure manager and franchising authority.

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EXPLANATORY NOTES

These Explanatory Notes relate to the [AUTOGENERATED] [AUTOGENERATED]
[AUTOGENERATED] on [AUTOGENERATED] ([AUTOGENERATED] [AUTOGENERATED]).

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