

# WILLIAMS-SHAPPS PLAN FOR RAIL: LEGISLATIVE CHANGES TO IMPLEMENT RAIL REFORM

## Introduction

Thank you for responding to this consultation. We are seeking your views on our proposals ahead of introducing legislation that will support the delivery of this once in a generation transformation of our railways.

Closing date is 4 August 2022.

## Personal details

1. Your (used for contact purposes only):

name

email

2. Are you responding: \*

as an individual? (Go to 'Consulting on legislative changes to implement rail reform')  
 on behalf of an organisation?

## Organisation details

3. Your organisation's name is?

4. Your organisation is:

- a national government or a regional, local or combined authority?
- a passenger body or interest group?
- a business representative group?
- a rail organisation?
- a rail supply chain?
- an accessibility body or interest group?
- a train operator or owning group?

- a technology company?
- a sub-national transport body?
- an infrastructure organisation?
- a sustainable travel group?
- a rolling stock company?
- an innovator?
- a freight operator?
- a union?
- an environmental organisation?
- an academic body?
- a tourism body?
- a research and development organisation?
- a freight customer?
- a developer?
- a rail project?
- another type of organisation?

5. Describe what your organisation does.

The Parliamentary Advisory Council for Transport Safety – better known as PACTS – was established by members of Parliament and transport professionals in 1981. It is now a charity and its objective is “to protect human life through the promotion of transport safety for public benefit”. It is independent, non-party political, and focuses on working with UK Parliamentarians, government, transport professionals, academics and stakeholders to promote and champion evidence based improvements in transport safety. It is unique in the UK in that it is active in road, aviation and rail safety, focused on Parliament, has over 100 member organisations from many sectors and no commercial interests. Please see website [www.pacts.org.uk](http://www.pacts.org.uk) for more information.

6. Your location is:

- UK wide?
- England – south-east?
- England – south-west?
- England – north-west?
- England – north-east?
- England – West Midlands?
- England – East Midlands?
- England – East of England?
- England – London?
- England – Yorkshire and the Humber?

- England wide?
- Scotland?
- Wales?
- multiple regions?

7. Your size of organisation is:

- 1 to 25 employees?
- 26 to 250 employees?
- above 250 employees?

## Consulting on legislative changes to implement rail reform

We are seeking your views on the proposed primary legislative changes required to implement commitments from the Williams-Shapps Plan for Rail ('Plan for Rail') [opens in a new window].

The plan for rail heralded the start of a major transformation of Great Britain's railways (Northern Ireland operates separately), to ensure 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 [opens in a new window] for procuring and managing passenger train services
  - elements of the Rail Delivery Group [opens in a new window]

As guiding mind, Great British Railways will be an organisation that integrates decision-making effectively across the system, with clear accountability held by it and the partners locally and nationally that deliver within the system that it leads, guiding the right decision making by the right people, at the right stage in the process.

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 passenger focussed railway

The plan also outlines measures to:

- improve accessibility across the railway
- develop a comprehensive environmental plan to help meet our net-zero carbon emissions target
- reform fares and ticketing
- develop a new offer for rail freight
- create the first ever 30 year strategy to ensure our railways help level up every part of our country

The ambitious package of reform 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.

Many of the commitments set out in the plan for rail do not require legislation to enact, however, legislation is required to make important elements of structural reform.

This consultation provides details 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.

# 1. Core functions of Great British Railways

Great British Railways will have a set of core functions to:

- plan and manage access to, and ensure the safe and effective use of, the Great British Railways network, consistent with Secretary of State guidance
- manage Great British Railways infrastructure
- manage and secure delivery of high-quality, reliable Great British Railways passenger services and be accountable for the customer offer

As guiding mind, Great British Railways will be an organisation that integrates decision-making effectively across the system, with clear accountability held by it and the partners locally and nationally that deliver within the system that it leads, guiding the right decision making by the right people, at the right stage in the process.

8. In your view does the proposed role of Great British Railways appropriately capture what you would expect to be delivered by an effective guiding mind for the railways?

- Yes, I agree with the proposed core functions completely (Go to 'Proposed factors for Public Interest Duty')
- Yes, I agree with the proposed core functions listed but think additional functions are needed (Go to 'Additional core functions')
- No, I disagree with the proposed core functions
- No, I disagree with the proposed core functions and think additional functions are needed (Go to 'Disagree with proposed core functions and think additional functions are needed')
- Don't know (Go to 'Proposed factors for Public Interest Duty')

Disagree with proposed core functions

9. You disagree with Great British Railways having the core function to:

- plan and manage access to, and ensure the safe and effective use of, the Great British Railways network, consistent with Secretary of State guidance
- manage Great British Railways infrastructure
- manage and secure delivery of high quality, reliable Great British Railways passenger services and be accountable for the customer offer

Why and what, if any, alternatives do you suggest?

Great British Railways having the core function to manage the railways and not just the infrastructure.

In addition:

- the engagement of new technology, research and innovation to be more prominent
- GBR should be a more stable and wider based customer with longer time horizons for the supply chain enabling better economies and wider supply market
- there should be a strategy and funding for developing staff skills and competence and in some instances also that of its supply chain

[After answering go to 'Proposed factors for Public Interest Duty']

Additional core functions

10. What other functions do you think are needed?

Manage safety of the rail system and make informed risk balanced operational and long term planning decisions.

[After answering go to 'Proposed factors for Public Interest Duty']

Disagree with proposed core functions and think additional functions are needed

11. You disagree with Great British Railways having the core function to:

- plan and manage access to, and ensure the safe and effective use of, the Great British Railways network, consistent with Secretary of State guidance
- manage Great British Railways infrastructure
- manage and secure delivery of high quality, reliable Great British Railways passenger services and be accountable for the customer offer

Why and what alternatives do you suggest?

N/A

12. What other core functions do you think are needed?

N/A

## 2. Proposed factors for Public Interest Duty

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 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

13. Do you agree with the proposed factors that Great British Railways must consider as part of its public interest duty?

- Yes, I agree with the proposed factors completely (Go to 'Option to delegate devolved contracting authority to Great British Railways')
- Yes, I agree with the proposed factors listed but think additional factors are needed (Go to 'Additional factors')
- No, I disagree with the proposed factors
- No, I disagree with the proposed factors and think additional factors are needed (Go to 'Disagree with proposed factors and feel additional factors are needed')
- Don't know (Go to 'Option to delegate devolved contracting authority to Great British Railways')

Disagree with proposed factors

14. You disagree with one or more of the factors that Great British Railways must consider as part of its public interest duty to balance:

- 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

Why and what alternatives do you suggest?

N/A

[After answering go to 'Option to delegate devolved contracting authority to Great British Railways']

## Additional factors

15. What other factors do you think Great British Railways should consider?

The current safety performance of the rail system in Great Britain is the best in its 185-year history. Separate reports by the European Rail Agency, the Office of Rail and Road, the Rail Safety and Standards Board and Professor Andrew Evans of Imperial College all offer evidence of this historically unprecedented achievement and benchmark the British rail network as the safest large railway system in Europe.

Nevertheless, fatal and life changing accidents do still happen. Any future changes to the organisation, management and delivery of the railway must not undermine its current safety performance and should seek further to improve it. Great British Railways must consider as part of its public interest duty to balance the safety of rail passengers, freight customers, rail staff and the general public.

Ways in this could be achieved are for GBR to:

- have a duty to work with other transport authorities for the promotion of safety and to inform development of future societal safety risk policies, investments and decisions.
- make further improvements in security, safety for all customers and staff and those who come into contact with the railway; and additionally protection against trespass.
- further develop the end to end journey with integrated transport solutions including the consideration of the overall a safety of the journey and the impact on the community.

Additional, other factors which GBR should consider are:

- much improved practices for implementing new technology to reduce risk and minimise barriers to the introduction of technologies that have the potential to improve safety. As new technologies are implemented, digital competence within the workforce and authorities is essential.
- use of railways for better land usage in the UK e.g. connecting new housing developments to existing and new stations.
- development of the freight network and 'inland ports'
- all successful organisations have a reasonable % of turnover invested in research and innovation . This should also be true of GBR.

[After answering go to 'Option to delegate devolved contracting authority to Great British Railways']

Disagree with proposed factors and feel additional factors are needed

16. You disagree with one or more of the factors that Great British Railways must consider as part of its public interest duty to balance:

- 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

Why and what alternatives do you suggest?

N/A



17. What other factors do you think are needed?

N/A

### 3. Option to delegate devolved contracting authority to Great British Railways

The existing role and responsibilities of the devolved administrations in relation to provision of passenger services will remain unchanged.

However, the plan for rail [\[opens in a new window\]](#) set out that devolved railways will be strengthened, through close collaboration with Great British Railways.

To support this and to enable the integration of track and train across Great Britain, we propose to enable, through legislation, the ability for Scottish 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 or Welsh ministers decide to pursue it. The terms of any delegation would need to be mutually acceptable to ministers in the devolved administrations 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.

18. Do you support including a primary legislation power to enable:

	Yes	No	Don't know
Scottish ministers to delegate their contracting authority to Great British Railways?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Welsh ministers to delegate their contracting authority to Great British Railways?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If not, why not?

No comment

## 4. Direct award to public sector operator

We propose amending section 25 of the Railways Act 1993 [\[open in a new window\]](#), which prohibits the appointment of a public sector operator for services that would be let by:

- Great British Railways
- Welsh Ministers

We propose to legislate so as to allow for a direct award to a public sector operator in specific circumstances such as to facilitate a major infrastructure project or a major industry reform programme.

The prohibition on public sector bidders in England and Wales for operators appointed via competition would remain.

The ability to make a direct award to a public sector operator would provide an alternative route for ensuring passenger service provision if an existing contract ended mid-way through a major infrastructure project or delivery of a major industry reform programme, where the uncertainty associated with those initiatives meant that competition was likely to have poor value for the taxpayer.

19. What, if any, views do you have on allowing appointment of a public sector operator by Great British Railways by direct award?

Whilst PACTS supports the option of appointing a public service operator, their remit should be wider than that proposed, where that is in the public interest. Any such public sector provider should be subject to industry safety approvals and supervision. It also needs to demonstrate that it has the management systems and competence to undertake the provision of safety critical operations before it is authorised to start. Such an assessment would need to be undertaken by GBR.

## 5. Facilitating passenger service contracts (by amending EU Regulation 1370)

To:

1. Assist the reforms outlined in the plan for rail [opens in a new window]
2. Ensure the smooth introduction and running of passenger service contracts we will need to amend Regulation 1370/2007 [opens in a new window].

EU Regulation 1370/2007 creates a bespoke procurement and state aid or 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.

We propose amending Regulation 1370/2007 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. The proposed amendments are:

1. Introduce domestic legislation for awards made under Regulation 1370/2007 that reduces the limitation period for the challenge remedy (the route through which a train operator can challenge decisions) to provide a relatively short period for challenges to be made.
2. Introduce a recovery remedy to accord with the new UK subsidy regime and clarify who may bring a claim.
3. Reintroduce Articles 5(6) [opens in a new window] which provides maximum flexibility in making direct awards and 7(3) [opens in a new window] which ensures transparency for awards made under Article 5(6) to ensure that flexibility and transparency in making direct awards is retained.
4. Amend wording within Article 7(2) [opens in a new window], which details the notice period for publishing a Prior Information Notice (PIN) before an Invitation to Tender (ITT) or direct award, to ensure clarity.

20. Do you support the proposed amendments to Regulation 1370/2007, which are:

	Yes	No	Don't know?
reducing the limitation period for the challenge remedy?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
introducing a remedy of recovery to accord with the new UK subsidy regime?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
clarifying who may bring a claim?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
retaining the ability to make direct awards under Article 5(6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
clarifying the PIN notice period?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

If not, why not?

No comment

## 6. Office of Rail and Road duty 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

It is important that Office of Rail and Road (ORR) [\[opens in a new window\]](#) is an engaged participant and actively enables Great British Railways to:

- plan
- manage

the railway 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. This work aims to ensure 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.

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
- 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.

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.

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.

The government has worked closely with ORR to ensure that the new duty:

1. Does not conflict with existing duties.
2. Does not compromise ORR's independence.
3. Provides ORR with a clear and specific legal requirement to take Great British Railways' approved access policy into account in its decision-making.

## 7. Proposed statutory duty on ORR reasoning

21. 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 policies have received Secretary of State approval?

Yes

No

Don't know (Go to 'Amendments to enable Great British Railways to function as a guiding mind')

22. Why?

N/A

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

There may be some immediate amendments to retained EU rail markets legislation that need to be made to enable Great British Railways to fulfil its guiding mind functions. Any such amendments will only apply to the Great British Railways network and will not directly affect other infrastructure managers.

In particular, 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 [opens in a new window]. These regulations set out requirements for separation of certain decision-making functions, for example the rules around:

- separation of management structures and processes
- capacity allocation and charging

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 which current retained EU rail markets legislation prevents.

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 network.

23. What changes, if any, do you think are needed to the existing access and management regulations to ensure that Great British Railways can meet its guiding mind function?

Evidence both from rail and other transport modes indicates that change always has the potential to increase safety risk unless specifically managed in such a way as to prevent this. The 2000/01 Cullen Inquiry into rail safety following the Ladbroke Grove collision starkly identified inadequately controlled safety hazards that had arisen directly (albeit inadvertently) from changes that were made during the restructuring which preceded privatisation of the railways in the 1990s.

PACTS strongly recommends that Great British Railways recognises the need systematically to identify and suitably mitigate risks that may arise from any recommended changes. The implementation of any changes must be resourced in such a way as to ensure that any consequential risks are mitigated before the commencement of revised operations.

It is PACTS understanding from the Williams-Schapps report that GBR will be accountable for safety of the rail system including appointed Passenger Service Contractors. To avoid the problems Rairack had with such responsibilities, it is essential that there are clear and unambiguous safety roles and responsibilities defined for GBR, Passenger Service Operators, Freight and Open Access operators. In particular, if GBR is made responsible for overall safety of the system clear policies, systems and resources need to be established to competently discharge such onerous responsibilities. The ORR must also be required to assess and test these as fit for purpose both before implementation and also on a regular basis thereafter.

## 9. Widening the scope of ORR's duty to promote competition

Rail is different to many consumer markets given the scale of public money involved, so it is important that this is given due consideration by the regulator when making decisions in what is a mixed public and private market. 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 [opens in a new window] so that, in addition to users, the regulator 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.

24. Do you agree with the proposed recasting of ORR's competition duty to better reflect public sector funding?

- Yes (Go to 'Removing barriers to collaboration between Great British Railways contracted operators')
- No
- Don't know (Go to 'Removing barriers to collaboration between Great British Railways contracted operators')

Against ORR amendment

25. Why not?

N/A



## 10. Removing barriers to collaboration between Great British Railways contracted operators

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

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

Great British Railways will also need to ensure that efficiencies are considered across all operators with rail passenger contracts with Great British Railways, across the system as a whole rather than by individual operators, to:

- reduce the need for public subsidy of the system
- protect taxpayers, growing the system and ensuring efficient use of available capacity

Passenger service contracts focus on improving the passenger experience and will support operators to collaborate 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.

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 1 of the Competition Act 1998 [opens in a new window]. 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 improving the efficiency of the rail system as a whole for taxpayers.

26. What do you think of the proposal to include in legislation, a power for Great British Railways to issue directions to its contracted operators to collaborate with one another?

Further development of collaborative working can deliver continuous improvements to rail safety and standards. The safety culture of all organisations is critically dependent upon the behaviour and values of their leaders. Where safety remains a constant area of focus between operator and best practice is shared, there are positive outcomes.

This has been clearly demonstrated through the recent Covid pandemic. With no increased mandate the sector continued to provide a means of transport for the public and freight maintaining existing safety requirements while also responding to the addition safety requirements to limit spread of the virus.

Over the last two decades the railway supply chain has endured a regular cycle of expansion and then contraction due to budgetary pressures. The impact of this has been not only to inflate purchase costs but also to cause difficulties with the recruitment and retention of safety-critical employees. Closer partnership working with the supply industry and continuity of work should deliver cost reductions, improved workforce capabilities and operational safety outcomes, as well as addressing skills shortages.

An example of successful collaboration is the preparation of the Industry Resilience Plan prepared by sectors leaders under the mandate of the Secretary of State. Implementation of

the plan was taken but goodwill was tested with funding from central Government delayed by over a year.

Looking to the future, collaboration in the development of new design and technology offers significant opportunity to improve capacity, performance and safety risk management.

27. In your view would train operating companies be willing to share information and collaborate in the way envisaged without the proposed legislative provisions?

Yes

No

Don't know (Go to 'Removing barriers to collaboration between Great British Railways contracted operators')

Risks to train operating companies

28. What are the risks to the Great British Railways contracted operators without the proposed legislative changes?

No comment

29. In your view do the proposed measures help to resolve these risks?

Yes

No

Don't know

No comment

Why?

N/A

# 11. Additional safe guards for third parties

30. What, if any, particular additional safeguards do you consider necessary to:

support the interests of third parties (including freight, open access and charter operators)?

Those charged with approving and implementing recommendations must both understand its safety implications and be able to ensure that all employees and stakeholders understand how safety is going to be maintained and improved through the changes and are able to act accordingly. The risk-based approach to safety management, which has underpinned the improvements in the industry's safety record, must be preserved. This requires that the models of cross-industry risk continues and is further developed, in order to provide the basis for evidence-based safety decisions. Improvements should made and followed through with the process of recommendation, guidance and good practice.

GBR should be charged with investigating and implementing pump priming 'Freight highways' (not necessarily separate lines but provisions in the timetable) and inland ports and promoting transfer of freight from roads.

protect passengers?

Those charged with approving and implementing recommendations must both understand its safety implications and be able to ensure that all employees and stakeholders understand how safety is going to be maintained and improved through the changes and are able to act accordingly. The risk-based approach to safety management, which has underpinned the improvements in the industry's safety record, must be preserved. This requires that the modelling of cross-industry risk continues and is further developed, in order to provide the basis for evidence-based safety decisions

protect taxpayers?

No comment

## 12. Customer offer

We need to reform the industry to improve the customer experience of buying rail tickets, grow revenue and save taxpayers' money. Great British Railways will set the approach for fares, ticketing and retailing, which means we will ask them to:

- act as a 'guiding mind' so that they can set a consistent customer offer over the network
- make fares simpler, clearer and easier to understand, and also reduce inconsistencies that have developed over time
- sell tickets through their website and app, learning from the best in-class providers' approach to digital ticketing and putting an end to current confusion of multiple train operators selling tickets which will, as well as making it easier for customers, reduce the cost to the taxpayer

By customer offer we mean the ticket products and services developed to meet customers needs.

Independent retailers will continue to sell tickets, and the industry as a whole will benefit from the innovation they will continue to bring. We want to make sure that retailers are treated fairly, which we think should mean Great British Railways' online retailing activities are independent of its wider decision making about retail strategy, including licensing decisions.

31. How, in your view, can 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?

No comment

## 13. Governance framework

The governance framework for Great British Railways will be underpinned by a number of strong and effective instruments.

The approach resembles other customer focussed sectors (for example regulated utilities and highways) but has been tailored to reflect the rail sector.

The instruments are:

1. Statute: primary legislation will set out the essential requirements for the establishment of Great British Railways and the statutory framework for governance.
2. 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 [opens in a new window] to reflect that Great British Railways will have integrated responsibilities across track and train.
3. Directions and guidance: will allow the Secretary of State to set additional requirements on Great British Railways on policy issues and matters relating to its funder role and 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.
4. Business planning and funding process: Great British Railways will be required to produce a five-year business plan setting out planned activity in response to high level outputs issued by 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.

32. In your view does the proposed governance framework give Great British Railways sufficient ability to act as a guiding mind for the railways while ensuring appropriate accountability?

Yes (Go to 'Great British Railways duties in licence')

No

Don't know (Go to 'Great British Railways duties in licence')

Against proposed governance framework

33. Your disagreement is with the:

statute (legislation)?

Great British Railways Licence?

directions and guidance?

business planning and funding process?

another issue?

Why and what would you like to see altered?

N/A

## 14. Great British Railways duties captured in the licence

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.

We are proposing to capture the duties of Great British Railways in the statutory licence issued by Secretary of State.

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.

34. Do you agree with the proposal for Great British Railways' new duties to be captured in the statutory licence and that primary legislation should require the licence to include specific duties in relation to accessibility, freight and the environment?

- Yes (Go to 'Not imposing financial penalties on Great British Railways in the event of a licence breach')
- No
- Don't know (Go to 'Not imposing financial penalties on Great British Railways in the event of a licence breach')

Against capturing Great British Railways' duties in the licence

35. Why not?

N/A

## 15. Not imposing financial penalties on Great British Railways in the event of a licence breach

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 make improvements for passengers and end users.

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 also still have powers to fine other types of licence holders where it currently has those powers.

Great British Railways will be ultimately accountable to the Secretary of State, and the Secretary of State will hold the powers to sanction Great British Railways where necessary, by exercising corporate and funding controls, including appointing certain members of Great British Railways Board.

The Secretary of State would take into account Great British Railways' performance in this regard when considering performance-related pay recommendations.

36. Do you support the proposal to amend ORR's powers so as exempt Great British Railways from financial penalty in the event of a licence breach?

- Yes (Go to 'Great British Railways business planning and funding')
- No
- Don't know (Go to 'Great British Railways business planning and funding')
- No comment

Against Great British Railways financial penalty exemption

37. Why not?

N/A
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## 16. Great British Railways business planning and funding

The plan for rail [opens in a new window] committed to a stable planning framework for Great British Railways, requiring Great British Railways to set out an integrated business plan over a five-year planning horizon, covering passenger services and infrastructure. This will enable Great British Railways to plan activities on a whole system basis and provide a link between longer term strategy and delivery of activities.

Today's periodic review process will be retained for Great British Railways. Through this process, Great British Railways will be required to produce an integrated business plan (across both infrastructure and passenger services). The business plan will address the expected activity and output across Great British Railways' remit. As with today's periodic review, there will be engagement with operators and local partners as part of the process.

As today, 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. Also as today, ORR will consider whether the expected level of funding available to Great British Railways is sufficient to deliver the proposed activities. ORR will also assess Great British Railways' business plan for key matters including safety, performance, efficiency, deliverability and long-term asset sustainability.

The periodic review will set the access charging framework for Great British Railways' network, and the five-year infrastructure settlements from government funders (Secretary of State for Transport and Scottish Ministers).

The financial settlement for passenger services will be agreed during government fiscal events, as is the case today. Major enhancements will continue to be separately governed.

Once agreed, Great British Railways will be accountable for the delivery of the five-year business plan and reports on progress against delivery. Independent monitoring and assurance against delivery will also be provided by ORR. This will include a role assuring changes required to the business plan in-life.

Only narrow changes to the current legislation will be required to enact these changes. We propose:

- adding a requirement on Great British Railways to produce an integrated business plan (covering both track and train).
- amending current legislation to improve information flows between government bodies ahead of and during the periodic review process.

The detailed process for developing and agreeing the business plan will be supported by non-legislative levers, such as the Great British Railways Licence, issued by the Secretary of State.



38. What feedback, if any, do you have on the proposed business planning arrangements for Great British Railways?

It is imperative that the Business Plan includes and prioritises safety. There are existing positive attributes which should be retained with further opportunities for improvement as listed below:

<b>Positive attributes to build on</b>
Strong independent safety regulator.
Independent, “no blame” root cause accident investigation capability.
Safety reporting, data and analysis.
The system safety risk model to inform decision making.
Proactive local risk control through well developed safety management systems.
Informed safety decision-making based on the legal principle of “reasonable practicability”.
A comprehensive and well developed system of rules and standards.
Robust change control and safety validation processes.
Independent confidential staff reporting system for safety concerns.
Collaboration within the industry to deliver continuous improvements to rail safety and standards.
<b>Improvement opportunities</b>
There is no organised facility for the retention and communication of corporate memory.
There is disjointed research (including “blue sky” research) and innovation, with insufficient focus on implementing existing research findings. Security of long term funding will be required along with empowered leadership capable of directing and resolving issues where a number of different organisations with potentially competing priorities are involved.
There should be a requirements for investment in research and innovation.
There is no system-wide decision-making authority which can determine the long-term direction for whole railway and make informed decisions concerning funding, accountability, benefit flows, etc.
There is a large number of organisational interfaces which require multiple and duplicate risk mitigations. This Review is an opportunity to simplify safety management.
The current processes for approval of new and modified vehicles, technology and equipment can be complex, time-consuming and add significant cost.
There needs to be better and more ‘open’ safety benchmarking both between rail operators and between rail and other leading industries, to identify good practice and ensure its adoption across the system.
Responsibilities for safety at the interfaces between the GBR and operators need to be clearly prescribed. Could safety be strengthened by sharing data, knowledge and joint risk assessments.
Rail organisations’ understanding of the industry standards sometimes leads to misinterpretation and thus to unnecessary risk aversion.
The large number of individual safety management system holders means that risk assessment and management capability is diluted across many different employers. This results in some organisations lacking in-house capability.
The specification and procurement of rolling-stock as well as the major refurbishment/retrofitting of rolling-stock should be reviewed, and minimal safety standards set.
Interior design of modern rail vehicles needs to be better adapted to the requirements of future passengers, particularly those who are older or have reduced mobility. Current British rail vehicle designs are dictated by commercial, capacity and crashworthiness requirements.
A clear route to managing the post-Brexit rail standards environment
There are potential improvements in the cost of leasing and purchasing rolling stock to be considered.

## 17. Independent scrutiny and challenge

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, so Great British Railways can be:

- independently supported
- robustly scrutinised across priorities including passenger experience, performance, efficiency and safety

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
- encouraging best practice and problem solving across the sector
- using its expertise and independent perspective to advise government
- continuing as health and safety regulator across Great Britain
- maintaining regulatory oversight of the access framework and continuing to regulate other infrastructure managers
- continuing to be responsible for taking action on certain rail-related competition and consumer law issues
- taking over sponsorship of the rail ombudsman
- continuing to monitor and enforce licences
- maintaining a central position in the Periodic Review process, including in assessing and advising on infrastructure funding and outputs, and assuring subsequent changes to the plans

In order to give confidence that Great British Railways is meeting its objectives, ORR will also monitor and scrutinise Great British Railways' ability to meet its business objectives against its:

- Secretary of State-issued licence
- business plan

ORR will continue to have robust enforcement powers to take action if necessary, to require Great British Railways' compliance with its licence.

ORR will help improve transparency by:

- supporting Great British Railways to develop mature and open self-assurance processes
- directly reporting on Great British Railways' delivery of objectives
- publishing key information to help inform decision makers and stakeholders
- continuing to publish Official Rail Statistics for the rail sector
- continuing to hold broad information gathering and investigatory powers in statute and through the licence

39. In your view will the proposed approach to independent scrutiny and challenge provide sufficient:

	Yes	No	Don't know
transparency?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
assurance that Great British Railways can be held to account?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If not, why not?

It is PACTS understanding from the Williams-Schapps report that GBR will be accountable for safety of the rail system including appointed Passenger Service Contractors. To avoid the problems Rairack had with such responsibilities, it is essential that there are clear and unambiguous safety roles and responsibilities defined for GBR, Passenger Service Operators, Freight and Open Access operators. In particular if GBR is made responsible for overall safety of the system clear policies, systems and resources need to be established to competently discharge such onerous responsibilities. The ORR, with its level of resource and competence, must also be required to assess and test these as fit for purpose both before implementation and also on a regular basis thereafter.

PACTS is of the view that ORR current organisation will need to be reviewed to assess whether they have the necessary resources and competence to adequately supervise the enlarged GBR safety responsibilities.

Consideration also needs to be made over RSSB's role in the future. If GBR is responsible for system safety and economic efficiency has transfer of RSSB core responsibilities to GBR been considered?

## 18. Great British Railways fee to cover the cost of ORR functions currently funded by the Network Rail licence fee

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 in order to cover the costs of ORR's functions which are currently funded from the Network Rail licence fee.

ORR already has similar powers to raise levies to fund its safety activities, and its regulation of some other networks.

40. Do you support the proposal to give ORR a statutory power to levy a fee on Great British Railways?

- Yes (Go to 'Independent passenger champion')
- No
- Don't know (Go to 'Independent passenger champion')

No  
com-  
ment

Against Great British Railways levy

41. Why are you against the proposal?

N/A

## 19. Independent passenger champion

In the new rail industry model Great British Railways will be accountable for the 'customer offer' on its contracted services.

Transport Focus will take on the passenger champion role.

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.

Building on the plan for rail, in partnership with our stakeholders, we have further developed the proposed responsibilities of Transport Focus as the new passenger champion under the four broad themes of:

- passenger advocacy - which includes:
  - championing accessibility across all stages of the passenger journey
  - considering unresolved passenger complaints not covered by the Rail Ombudsman [opens in a new window]
  - 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 - this includes:
  - 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 - which includes:
  - engaging 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
  - monitoring passenger complaint volumes and themes
- passenger watchdog - which includes:
  - investigating 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
  - work closely with Great British Railways to address problems or pass the matter to ORR where necessary with Transport Focus will retaining its ability to escalate issues to the Secretary of State or the relevant devolved authority for action where resolution cannot be reached

Transport Focus currently has a duty to investigate matters relating to the provision of:

- railway passenger services
- 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 1993 Railways Act [opens in a new window] to ensure the duty to investigate will apply to all matters that affect passenger experience and enable Transport Focus to make representations to the organisations that provide these services, includ-

ing Great British Railways. We will amend wording across Transport Focus legislation, where required, to reflect the proposed new rail industry structure. The role and scope of London TravelWatch will not change.

42. In your view will the proposed change to the railways act enable Transport Focus to effectively undertake the role of independent passenger champion in the new rail industry structure?

- Yes (Go to 'Improving accessibility')
- No
- Don't know (Go to 'Improving accessibility')

No  
com-  
ment

Against proposed change

43. Why are you against the proposal?

N/A

## 20. Improving accessibility

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 and the call for evidence submissions to the Williams Rail Review highlighted an 'urgent need' to improve accessibility. 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.

Our aim is to drive culture change in the rail industry and transform the passenger experience through a suite of reforms, including a new accessibility duty on Great British Railways.

The new duty looks 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. This duty would be in addition to the Public Sector Equality Duty (PSED)[opens in a new window] which will apply to Great British Railways.

44. In your view how do we ensure that accessibility is integral to Great British Railways' decision making?

The licence requirement and ORR's inspection monitoring is a good basis.

## 21. DPTAC's remit

We propose that the role of the Disabled Persons Transport Advisory Committee (DPTAC) [opens in a new window] is expanded in primary legislation to become a statutory advisor to Great British Railways.

Established by the Transport Act (1985) [opens in a new window], 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.

45. 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?

- Yes (Go to 'Promoting open data')
- No
- Don't know (Go to 'Promoting open data')

No  
com-  
ment

Against DPTAC's remit

46. Why are you against the proposal?

N/A



## 22. Promoting open data

The Plan for Rail committed to an "open by default" approach to data sharing, in order to:

- better inform journeys
- improve transparency
- unlock new innovations

We want to unlock the full potential of data, harnessing it to power the services of the future.

Among its priorities, Great British Railways will need to make strategic decisions in the interests of the public. 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.

To promote open data, 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 [opens in a new window].

While information obtained by Great British Railways will be subject to existing legislative requirements for confidentiality, Great British Railways will be enabled to make permitted information disclosures for the purpose of carrying out its functions and activities.

### Legal changes

47. In your view are further legal changes necessary to ensure data is open by default?

- Yes
- Unsure
- No (Go to 'Promoting open data')
- Don't know (Go to 'Promoting open data')

No  
com-  
ment

48. What further changes would you propose?

N/A

### Promoting open data

49. What, if any, other barriers do you think need to be addressed to promote open data?

N/A

## 23. Luxembourg Rail Protocol

The UK signed the Luxembourg Rail Protocol [\[opens in a new window\]](#) ("the protocol") in 2016.

The protocol is an international treaty which aims to reduce the cost of finance for rolling stock and leasing companies by reducing the level of risk to creditors (for example 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 (locomotives, carriages, wagons or other vehicles used on a railway) 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 operators securing finance for rolling stock.

The protocol aims to address this by establishing:

- a harmonised international legal framework for the creation and registration of international interests (similar to mortgages and leases) in rolling stock
- legal remedies for default or insolvency

We are committed to unlocking the benefits of greater private sector financing of rolling stock to deliver new vehicles and upgrade existing fleet, secure inward investment and promote UK rail exports. To do so requires new legal powers in legislation which will enable the UK to implement and then ratify the terms of the protocol through secondary legislation in due course. 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.

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

- Yes (Go to 'Impact assessments')
- No
- Don't know (Go to 'Impact assessments')

No  
com-  
ment

Luxembourg Rail Protocol reasoning

51. Why not?

N/A

## 24. Impact assessments – additional impacts or risks

The impact assessments for this consultation outline our current best understanding of the:

- costs
- benefits
- risks
- disbenefits

associated with the policy proposals 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.

52. Do you have evidence relating to the impacts and risks identified discussed within the impact assessments?

- Yes
- No (Go to 'Impact assessments')
- Don't know (Go to 'Impact assessments')

No comment

Additional impacts evidence to include in the assessments

53. What impacts, risks and why, including any evidence?

[Attach additional information to your return]

Comments:

N/A

## 25. Impact assessments – additional evidence

54. Are there, in your view, impacts or risks of the policies proposed which have not been covered by the impact assessments?

- Yes
- No (Go to 'Final comments')
- Don't know (Go to 'Final comments')

N/A

Other impacts and risks

55. Which impacts and risks, including any evidence you may have?

[Attach additional information to your return]

Comments:

N/A

## 26. Final comments

### 56. Any other comments?

The current GB rail network lacks a suitably empowered, and resourced system- wide organisation to prepare and implement such transformational opportunities. We welcome the creation of Great British Railways with the plan to draw disparate parties together and end years of fragmentation.

PACTS are pleased to see that 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. It is important that any changes undergo a specific safety validation. We recommend that the consultation be undertaken in a timely manner.

We also recommend that such a consultation includes addressing system weaknesses identified as part of the 2011 McNulty study of the rail industry's value for money.