

**Transport for the North  
Response to Consultation on Legislation to Implement Rail Reform  
August 2022**

**Summary**

Transport for the North (TfN) is the statutory Sub-National Transport Body for the North of England. Its statutory responsibilities include preparing a Transport Strategy for the North and providing statutory advice to the Secretary of State on strategic investment priorities for the rail and road investment programme. In addition, TfN jointly exercises, with the Department for Transport (DfT), management functions in relation to the TransPennine Express and Northern service agreements through the Rail North Partnership Agreement.

The legislation must respect the powers and responsibilities already devolved by the Secretary of State to TfN. Where the legislation transfers responsibilities jointly exercised by the DfT with TfN, it must create a requirement on Great British Railways (GBR) to exercise them with TfN. The legislation must also respect the right of TfN to propose further devolution of transport powers and place a requirement on GBR to formally consider and respond to such proposals.

In establishing GBR, it is important that the legislation places a requirement on GBR to grow both passenger and freight usage of the rail network in order to meet government requirement to achieve net zero (making this an explicit target).

The nature of rail services and how they are provided has changed significantly in recent years and the legislation should support new approaches to the provision of services, rolling stock and new models of service operation where appropriate.

As a strategic guiding mind there must be a requirement placed on GBR needs to work with and seek the views of other statutory partners – such as TfN. The legislation needs to ensure that GBR's regions have sufficient autonomy to work with regional partners to achieve agreed strategic objectives.

The roles and responsibilities already devolved to TfN have enabled significant progress to be made in realising the eight core goals identified for GBR: the legislative framework must be framed in a way that cements and builds upon this devolution by:

- Defining the role and responsibility of GBR regions explicitly and making it a requirement for them to work with and seek the views of statutory bodies in their region. There should be a requirement to establish a single GBR region for the North: refocusing the railway sector in the North in this way will be central to changing the culture and avoiding the creation of a bigger version of Network Rail

- The revision of TfN's statutory Strategic Transport Plan has adopted a user-centred, place-based, outcome-focused approach. The evidence base assembled by TfN provides a consistent base-line that can/should be used all public sector bodies in preparing their own strategies. TfN's Freight and Logistics Strategy provides the basis for actively planning for growth of rail freight movements in the North and across the wider network
- TfN's Regional Decarbonisation Strategy makes the case as to why it is necessary to plan for expansion of the rail sector (passenger and freight) in order to realise the North's economic potential in a way that is consistent with the UK Government's requirement to achieve net zero. Recovery of rail in the North has been consistently faster and stronger than elsewhere in the UK and reflects the on-going role that rail has in support of the North's economy.
- TfN's focus on the user experience serves to emphasise the importance of simplification of fares, improved customer information and better management of disruption. TfN's Connected Mobility Hub works with partners across the North to improve the user experience: in this TfN works closely with Transport Focus.
- The devolved working arrangements between TfN and DfT established through the Rail North Partnership have enabled strong working relationships at the regional level: these in turn have enabled processes to be simplified and increased accountability. The establishment of a single GBR region for the North would enable TfN and GBR to build on this foundation so as to enable things to be done quicker and ultimately reduce costs. TfN is working with the rail sector to develop a proposition for the North on this basis.
- A key reason for establishing TfN as a statutory body was to empower the North's Political and Business leaders to provide leadership on strategic transport issues. Establishing a single GBR region for the North, charged with a requirement to work with TfN, will build upon the partnership working to date and embed further the 'can do' attitude that will deliver results.
- The legislative framework must place a requirement on GBR to ensure that passenger service contracts moving forward explicitly empower the private sector to innovate and adopt new business models where appropriate: over-specification and centralisation of the contracts by GBR will be against the user interest. Empowering the private sector in this way will harnesses its ability to grow the rail market at a reduced cost to the public sector. Experience in the North with the procurement of new rolling stock shows the benefits possible by redefining the relationship between public and private sectors.
- Given the UK Government's requirement to achieve net zero there must be an explicit requirement placed on GBR to ensure its investment decisions are consistent with this public policy outcome. In particular GBR should be required to explicitly take into account the wider benefit of growing the

railway as a travel choice, and consideration given to the avoidable costs that might otherwise have been incurred. GBR should be required to initiate a rolling programme of electrification as a priority in support of the Government's net zero requirement: this would enable savings to be secured as a result of the reduction in unit costs that comes with a rolling programme.

## **National Legislative Background**

The Cities and Local Government Devolution Act 2016 amended the Local Transport Act 2008 and enables the Secretary of State to establish Sub-national Transport Bodies.

Regulations made under section 102E of the (amended) Local Transport Act 2008 establishing a Sub-national Transport Body are done so only when the Secretary of State considers that:

- a) Its establishment would facilitate the development and implementation of transport strategies for the area, and
- b) The objective of economic growth in the area would be furthered by the development and implementation of such strategies

In this context Transport Strategy means a transport strategy within the meaning of Section 102I of the Local Transport Act 2008 and includes all investment and delivery plans.

In preparing the draft legislation to implement the rail transformation set out in the Williams-Shapps Plan for Rail it is essential that there is explicit recognition of, and cross-reference to the existing legislative framework provided by the Local Transport Act 2008 in respect of Sub-national Transport Bodies and their role in respect of the identification of strategic rail priorities to the Secretary of State.

## **Existing Legislative Context**

Transport for the North was established under section 102E of the Local Transport Act 2008 and pursuant to the Order made on 22<sup>nd</sup> January 2018 as the Sub-national Transport Body for the Transport for the North area with the power to exercise the following functions:

### *General Functions*

- a) To prepare a Transport Strategy for the Transport for the North area in accordance with section 102I of the Local Transport Act 2008
- b) To provide advice to the Secretary of State about the exercise of transport functions in the Transport for the North Area
- c) To co-ordinate the carrying out of transport functions that are exercisable by its different Constituent Authorities with a view to improving the effectiveness and efficiency of the carrying out of those functions
- d) If Transport for the North considers that a transport function in relation to its area would be more effectively and efficiently carried out by Transport

for the North, to make proposals to the Secretary of State for the transfer of that function to Transport for the North

- e) To make other proposals to the Secretary of State about the role and functions of Transport for the North

In addition, the Order establishing Transport for the North includes the following additional powers that must be taken into account when preparing the draft legislation establishing GBR:

*Ticketing Schemes exercisable concurrently with the Constituent Authorities*

- a) To make an advanced ticketing scheme under section 134C(1) of the Transport Act 2000
- b) To make other ticketing schemes under section 135(1) of the Transport Act 2000
- c) (Sections 134(9) to (11), 134D to 134G, 135(7) and (8) and sections 136 and 137 are applicable in connection with such ticketing schemes

*Rail Franchise Agreements exercisable concurrently with the Constituent Authorities:*

- a) The right under section 13 of the Railways Act 2005 to be consulted over the grant of a rail franchise agreement for passenger services within, to and from the Transport for the North Area and the right to enter into arrangements with the Secretary of State relating to the management of rail franchise agreements

*Other Powers:*

- a) Transport for the North will act as a Statutory Partners to the Secretary of State in both road and rail investment processes and will be responsible for setting the objectives and priorities for strategic road and rail investment in the Transport for the North Area
- b) Transport for the North has taken over the role and functions of Rail North Limited, and through a Partnership Agreement with the Secretary of State for Transport exercises management functions in relation to the TransPennine Express and Northern Franchise Agreements

In preparing the draft legislation to implement the rail transformation set out in the Williams-Shapps Plan for Rail there must be explicit recognition of, and cross-reference to the existing statutory powers and responsibilities devolved to TfN by the Secretary of State.

It is the expectation of the TfN Board that, as the minimum, the current level of devolution by the Secretary of State will be maintained following the implementation of the Williams-Shapps Plan for Rail.

## **Transport for the North**

Transport for the North (TfN) is the statutory Sub-national Transport Body for the North of England with powers and responsibilities devolved to it by the Secretary of State under the Local Transport Act 2008.

TfN's Board membership is comprised of 20 Local Transport Authorities and 11 Local Enterprise Partnerships in the North of England, together with co-opted non-voting representatives from the six former Rail North authorities, HS2 Ltd, Network Rail and National Highways, and the DfT with observer status. TfN published its statutory Strategic Transport Plan (STP) in 2019. This sets out a 30-year strategy and outline investment programme to increase the North's economic prosperity through developing our transport provision.

The STP provides the statutory long-term planning framework for the North's transport system, including the rail network. It recognises the importance of sustained investment in rail in the North to support our economic aspirations. This includes full completion of the proposed HS2 network, Northern Powerhouse Rail (NPR) to link the north's major cities, Transpennine Route Upgrade (TRU) together with improvements to the existing rail network for passenger and freight traffic.

TfN is refreshing the regional evidence base as part of its commitment to review and update the STP. TfN's regional evidence base was used to shape its response to the call for evidence by the GBR Transition Team preparing the Whole Industry Strategic Plan. To support the STP, TfN has recently developed and published its Decarbonisation and Freight Strategies. Rail is particularly important to achieving the aims of both, through efficient movement of goods and passengers and through improvements including electrification and other means of removing diesel trains.

Because of the importance of rail to the North's economy, TfN North and the DfT have jointly managed the Northern and TransPennine Express rail service contracts since 2016 through the Rail North Partnership with day-to-day management being undertaken by a dedicated team based in Leeds on behalf of the two partners. The Rail North Partnership has been successful in providing a local perspective to the contracts, and in managing the recovery of services following the 2018 timetable issues and in managing service and contractual arrangement changes as a result of the Coronavirus pandemic.

All 20 TfN Member Authorities together with six other Rail North authorities in the East and West Midlands which are served by Northern and TransPennine Express services have signed the Rail North Partnership Agreement which provides for their input and for sharing of appropriate information subject to confidentiality provisions.

TfN welcomes the proposals in the Williams-Shapps Plan for Rail to establish GBR.

TfN is working with GBR Transition Team, local partners, Network Rail and the DfT on a programme of work over the next year that will define TfN's future role

on rail, one that respects the powers and responsibilities already devolved to TfN by the Secretary of State. Our work is developing six areas:

- An overall strategic partnership between GBR and TfN
- A jointly agreed Rail Strategy for the North, consistent with the emerging TfN STP work
- A common set of outputs required from rail
- A single prioritised investment pipeline
- Double devolution, i.e. from GBR/DfT to TfN and within that framework to local partners on appropriate matters
- A profit and loss account showing the long term impact of rail investment in the North.

The draft legislation to implement the rail transformation must reflect this approach which is consistent with powers and responsibilities already devolved by the Secretary of State.

With this as a backdrop, TfN's responses to the specific questions raised in this consultation are set out below.

**Question 1 Does the scope of the proposed designation of Great British Railways as an integrated rail body appropriately capture what you would expect for an effective guiding mind for the railways? (paragraph 2.6) Please explain.**

In broad terms, yes. It is clear provided the legislation as it is enacted follows these principles (note 2.14 as to flexibility).

There should be explicit requirements included within the core functions identified for GBR (para 2.7) to:

- Plan for and deliver growth in the use of the rail network – such a requirement is necessary given the key role that expansion of the rail system in meeting the duty on the Government to achieve net zero carbon in line with the target adopted by the UK Government. The evidence-based work of TfN as the Statutory advisor to the Secretary of State on investment priorities has identified the requirement for a step change in the capacity of the rail system in order to deliver the agreed strategic outcomes for the North.
- Explicitly recognise the role of freight – such a requirement is necessary to ensure that the Government supports investment that enables growth of rail freight to both support economic growth and reduce the environmental impact of freight movement across the transport system as a whole.

In exercising its functions there must be requirements placed on GBR (para 2.8) to:

- Work and consult with, TfN as the Statutory Sub-national Transport Body – such a requirement is necessary to respect the devolution of powers and responsibilities already made by the Secretary of State. TfN would seek



reassurances that where TfN and GBR collaborate it is done so in an effective and meaningful way, with a clear pathway for ensuring TfN's contributions shape GBR's decision-making, in the same way that GBR's involvement in the TfN Board would be actively sought.

- Actively plan for expansion of the rail system in support of delivering agreed economic, environmental, and social outcomes for the TfN Area in line with TfN's Statutory Strategic Transport Plan – such a requirement is necessary given the evidence base assembled by TfN which sets out the need for a step change in the rail system.
- Formally consider and respond to specific proposals from TfN for further devolution of powers, consistent with existing General Functions of TfN (as granted by the Secretary of State).

Experience of working with National Highways (formerly Highways England) shows the importance of ensuring the contents of the GBR Licence properly reflects the need for GBR to work with TfN as a statutory body (para 2.9). TfN would expect there to be a meaningful consultation in due course on the proposed contents of the GBR Licence to which it is able to respond.

We agree with the statement that GBR should not be a larger version of Network Rail. As a strategic (guiding) mind it is essential that GBR works closely with other statutory partners – such as TfN. Such an approach reflects the need for the work of GBR to be integrated and aligned with the work of TfN to set out the long-term future of the North's transport system in the statutory Strategic Transport Plan. Such an approach will avoid unnecessary duplication of effort by GBR to develop an evidence base and ensure that the plans and proposals for the rail system are taken forward alongside and in support of investments in the wider transport system.

The "Guiding Mind" needs to be, and remain in the future, adaptable and approachable rather than being dictatorial. In this respect, GBR's regions need to have sufficient autonomy to work effectively with regional and local partners when appropriate. We understand the need for GBR to have regard for the impact of rail on the whole of Great Britain, but this should not be a reason to stifle local partnerships or to impede the progress being made through existing devolved arrangements where their effect is mainly local.

GBR needs to give real power its proposed regional divisions to allow them to work with statutory regional partners such as TfN and its partners, otherwise there is a risk of centralist thinking with little understanding of regional, or local, markets. Centralised management of fares and timetables undermines the need to build relationships with local markets which are undoubtedly key to growing rail demand and revenue.

The five current regions are noted in the Plan for Rail, but these perpetuate the London-centric thinking that has dominated strategic rail planning since Victorian times. Transformation of the rail sector will only be possible by better aligning the GBR regions with strategic economic areas. TfN was established with the

explicit aim of enabling the economic potential of the North to be realised. Requiring a single GBR region for the North would be consistent with the Plan for Rail's objective of promoting local accountability, improving decision-making and being more responsive to local needs.

The benefits of a single GBR region for the North would be further enhanced by a single passenger service operator for that region. Such an approach would enable GBR and TfN to build upon the success of the Rail North Partnership, whilst at the same time enabling savings to be realised through a rationalisation of back-office and support functions: any savings realised being reinvested in enhanced services.

Paragraph 2.3 suggests that GBR will support the growth of the freight market and cross-regional services. We agree with this, but this makes it essential that there is a requirement placed on GBR to work with TfN as the responsible body for advising the Secretary of State on strategic priorities.

It is important to understand what the proposed definition for cross-regional services entails. It is important to understand whether this definition includes services commissioned and/or managed by the devolved administrations in Scotland and Wales. Given the importance of cross-boundary services to the work of Transport for the North we would expect that where the legislative framework makes provision for the role of the devolved administrations in specifying services that there is a requirement to seek the views of TfN in line with TfN's statutory right to be consulted.

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

The requirements of GBR as set out in Paragraph 2.8 are too narrow. GBR's work needs to be informed by and support wider economic and transport plans, of which TfN's statutory Strategic Transport Plan is one.

Equally important is integration with other modes of transport. This is essential in order to offer improved travel choices to individuals and businesses, as well as being required in order to decarbonise the North's transport system.

Rail users are dependent on other modes of transport to access the system, be that walking, cycling, car access and other forms of public transport. Whilst there are good examples in the North of England of integration between rail and other modes, there is much more that could be done e.g. in terms of facilities, service and timetable integration, fares integration and joint marketing. Achieving better integration across modes is fundamental to achieving the ambition set out by TfN and its partners. There must be a requirement on GBR to work with TfN and other bodies to integrate the rail 'offer' as an integral component of the wider transport offer.

Paragraph 2.9 of the Consultation Document proposes that GBR should maximise the social and economic value as defined by the Secretary of State. We support this intention. As the statutory body charged by the Secretary of



State with producing the Strategic Transport Plan it is essential that the consultation on the GBR Licence affords TfN with the opportunity to provide its advice in respect of the most appropriate measures of social and economic value. In this way it will be possible to align the work of GBR with the agreed strategic outcomes for the North, as set out in the updated Strategic Transport Plan.

In addition, we believe that there should be an explicit requirement on GBR to decarbonise the rail system and for that to be delivered within the framework of any overarching requirement adopted by the UK Government. . Addressing carbon emissions from rail is a major component of the TfN Decarbonation Strategy. GBR should use its role as the 'guiding mind' to ensure that there is a rolling programme of electrification that is consistent with the need to meet the UK Government's legal requirements. Experience has consistently shown that a rolling programme will help reduce the unit cost of electrification to the benefit of the public purse.

Rail has an important role to play in improving social inclusion by providing access to employment opportunities, education facilities and leisure destinations. TfN's work on Transport Related Social Exclusion serves to demonstrate the extent to which there is a need to invest in widening travel choices. GBR should be required to take into consideration the role of rail in improving social inclusion when exercising its public interest duty.

The DfT's Transport Decarbonisation Plan identified the extent to which the increase in public transport costs relative to motoring costs serves to act against wider public interests, including the requirement to achieve net zero. GBR should be required to ensure that in simplifying fares it serves to enhance the offer to the user.

GBR should also be required to ensure its investment decisions enable the rail system to be fully accessible at the earliest possible opportunity. A significant benefit of having a single guiding mind is the ability of GBR to determine whether the most appropriate solution is investment in infrastructure and/or investment in rolling stock.

There is no reference to safety aspects in conjunction with accessibility – although noted at paragraph 1.40 a separate consultation will be conducted on this, it is important as a public interest duty in this current consultation.

**Question 3 Do you support the proposal to include a power in primary legislation to enable Scottish and Welsh Ministers to delegate their contracting authority to Great British Railways, subject to the terms of delegation being mutually acceptable to ministers in the Devolved Administration(s) and the Secretary of State? (paragraph 2.17) Please explain.**

We support inclusion of this proposal. Devolution of rail services in Scotland and Wales has been successful in stimulating growth and investment in the rail system and ensuring greater alignment with infrastructure investment plans for

the wider transport system. Allowing the Devolved Administrations to delegate their contracting authority to GBR, should they wish to do so, appears a helpful step.

Scotrail, Transport for Wales and Caledonian Sleeper services all serve the North of England. Transport for Wales is a significant operator in its own right and in the North West provides links from Chester and North Wales to Crewe, Manchester and Liverpool as well as being the operator of Chester Station. It is important that Transport for Wales, and the Welsh Government as its service specifier, recognise the importance of consulting with TfN when preparing future service specifications.

Similarly, TransPennine Express, which is jointly managed by TfN through the Rail North Partnership, provides services in Southern Scotland on both the East and West Coast Main Lines. Working through the Rail North Partnership there is a need to work with Transport Scotland to ensure that the needs of Scottish internal markets as well as longer distance flows are met. There may be a need for GBR to ensure that these local markets are effectively served if competing directions and guidance are evident.

**Question 4 Do you have any views on the proposal to amend Section 25 of the Railways Act 1993 to enable appointment of a public sector operator by Great British Railways by direct award in specific circumstances? (paragraph 2.18) Please explain.**

We support the proposed amendment to the Railways Act 1993, particularly given that it is unclear to us why the original prohibition was in place. We also feel that the circumstances in which a direct award to a public sector operator could be made could be wider. Such a measure would offer future proofing.

In the North of England, services on the East Coast Main Line have defaulted to the DfT, as operator of last resort, on two occasions and other contracts including Northern, Transport for Wales and Scotrail are now being operated by the public sector having been originally awarded to private companies. This would not have been foreseen at the time that the 1993 Railways Act was enacted. The legislation should facilitate operation by public sector and not for dividend companies in the future.

**Question 5 Do you support the proposed amendments to Regulation 1370/2007, which are i) reducing the limitation period for the challenge remedy, ii) introducing a remedy of recovery to accord with the new UK subsidy regime, iii) clarifying who may bring a claim, iv) retaining 69 Williams-Shapps Plan for Rail Legislation Consultation the ability to make direct awards under Article 5(6), and v) clarifying the PIN notice period? (paragraph 2.20) Please explain.**

We note that the European Union (Withdrawal) Act 2018 retained EU Regulation 1370/2007, which provides rules for the award of Public Service Obligation (PSO) contracts to bus operators and to train operating companies, including

specifying when and how they are competitively tendered and when, in certain circumstances, they can be directly awarded.

We support the proposed changes on the basis that they appear designed to aid clarity, efficiency and smoothness.

Authorities who can award PSO contracts include the DfT and the devolved administrations in Scotland and Wales; TfN does not have the right to award such contracts although the Rail North Partnership, which includes TfN, manages such contracts which have been awarded by DfT. TfN's status as a statutory consultee on franchise awards which affect the North of England must be retained and provided for in any amended arrangements.

i) reducing the limitation period for the challenge remedy

A reduction in the limitation period will favour the contracting authorities and will be in the public's interest by providing speedier awards with reduced uncertainty regarding the possibility of disruptive legal challenges. The limitation period of one month is not unreasonable and as stated is in line with general UK procurement regime although we would suggest a 6 week period is considered.

ii) introducing a remedy of recovery to accord with the new UK subsidy regime

The comments on the introducing a remedy of recovery to accord with the new UK subsidy regime are brief and do not go into sufficient detail to explain what exactly is being proposed. However, legislation codifying the new UK subsidy regime should be welcomed.

iii) clarifying who may bring a claim

Clarifying who can bring a claim is welcomed. There is currently no certainty regarding who can bring a claim regarding a PSO contract awarded under Regulation 1370/2007. Increased certainty regarding potential claimants will enable authorities to make more informed legal risk assessments.

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

The ability to issue Direct Awards is essential in dealing with emergency situations. The continued preservation of Direct Awards as an option will certainly be in the public's interest. Certainty regarding timescales of when a PIN is welcomed and in line with the wider UK Public Procurement regime. Clarification of the meaning of the *launch* as referenced in Regulation 1370/2007 is essential to ensure compliance.

**Question 6 Do you support the proposed statutory duty on ORR to facilitate the furtherance of Great British Railways' policies on matters of access and use of the railway, where these have received Secretary of State approval? (paragraph 2.38) Please explain.**

We support this statutory duty being placed on ORR.

The principle in paragraph 2.28 which maintains “key legislative protections for passenger and freight operators, that guarantee fairness and transparency for users of the railway” is appropriate. However, it is important to be clear what this would mean in practice.

For the rail system to realise its contribution to wider public objectives – increased economic growth, reduced environmental impact, improved connectivity to achieve social inclusion – it is essential that ORR considers the needs of both passengers and freight customers. ORR should be required to take statutory transport plans (such as TfN’s Strategic Transport Plan) into consideration when required to take a view on the appropriate balance between passenger and freight needs.

The Secretary of State should in their guidance to the ORR emphasise the need to review and adjust service patterns provided by open access operators where there is a public interest to do so. Given the changes in rail market observed since the pandemic it is appropriate to give the ORR this flexibility in order to ensure that best use is being made of the publicly owned asset.

**Question 7 Noting we will consult separately on the use of the power to amend the existing Access and Management Regulations, are you aware of any immediate essential changes that are needed to these Regulations to enable Great British Railways to deliver its guiding mind function? (paragraph 2.44) Please explain.**

We are aware that the current access arrangements associated with the East Coast Main Line may serve to constrain the future timetable options for this key corridor. Given the deferral of the proposed timetable change for May 2023 we recommend that there is a need to urgently review whether applying flexibility to the current access arrangements might unlock benefits for the user sooner than might otherwise be possible.

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

It is important that the benefits of private sector investment, including that enabled through competition, continue to be realised. In terms of the proposals set out in the consultation document this is an issue where there appears to be an inconsistency.

The proposed model for the guiding mind would see GBR, on behalf of the UK Government, prescribing the content in the passenger service contracts. There appears to be no recognition that such a level of prescription may significantly reduce the scope for restoring competition to the market as the document seeks.

As set out in previous comments, public sector investment in the rail system needs to be viewed as part of a wider investment in infrastructure that supports economic growth, reduces environmental impact, and improves social connectivity. It is in this wider context that ORR should be required to give due weight to wider public policy outcomes when considering issues of competition.

There needs to be a requirement placed on the Office of Road and Rail to ensure that operation of the rolling stock market is in the public interest and delivers value for money for the taxpayer. Experience in the North demonstrates that there are alternative models for securing rolling stock through intervention by the public sector: the ORR should be empowered to enable further innovation where this is in the public interest.

**Question 9 Do you support the proposal to include in legislation, a power for Great British Railways to issue directions to its contracted operators to collaborate with one another in circumstances where doing so could otherwise give rise to concerns under Chapter I of the Competition Act 1998, in particular, where this could lead to defined benefits to taxpayers and/or passengers? (paragraph 2.54)**

Realising the potential added value of effective collaboration can be impacted upon by a number of obstacles not least the issue of competition law. We therefore We strongly support this proposal.

In the service contract rather than franchising regime, the aim needs to be the best overall rail offer for customers regardless of operator. Restrictions in the franchising model may have disincentivised investment, innovation and other improvements and also led to competition between franchised operators that ultimately does not best serve the public interest particularly when that competition leads to additional pressure on the constrained resource that is available paths for services.

Legislation aside, successful collaboration requires mutual trust between all parties involved and is enabled when there is a shared vision and agreed outcomes to which all parties are committed. TfN is already demonstrating its added value as a statutory strategic body charged with aligning activity to an agreed outcome. It is thus ideally placed to play a key role in building trust between rail industry and key stakeholders across the region in support of rail transformation.

A prime example is TfN's role chairing the newly created Transpennine Route Upgrade (TRU) Stakeholder Forum. Designed to have an ambassadorial role helping to maintain the profile of the TRU project by bringing together key stakeholders at a regional level the Forum will disseminate of information to the wider stakeholder community so as to inform, update and advise and will pull information from the stakeholder community to identify programme risks and opportunities and feedback local intelligence. Acting as an advisory panel it creates the platform for a proactive dialogue between key strategic stakeholders and the rest of the TRU governance structure.

**Question 10 Would Train Operating Companies be willing to share information and collaborate in the way envisaged without the proposed legislative provisions? What are the risks to them without the proposed legislation? Would the proposed legislative approach help to resolve these risks?**

Given that the scope of the service passenger contracts will be (predominantly) determined by the public sector and given the scale of public sector investment (both capital and revenue) in supporting their delivery, the holders of a contract should be required to make an agreed level of information freely available to appropriate public sector bodies. TfN as the statutory body charged with preparing the Strategic Transport Plan and with advising the Secretary of State on strategic priorities, should have free access to that information.

This requirement will need to be balanced with the commercial interests of the holder(s) of service passenger contract(s). This balance should be reflected in the requirements of the service passenger contract: the contract should also allow for statutory bodies (such as TfN) to agree with the holder(s) of contracts to have access to additional data and information where there is common interest and mutual benefit.

**Question 11 Are there any particular additional safeguards (in addition to the safeguards outlined in paragraphs 2.54 - 2.55) that you consider necessary to support the interests of third parties (including freight, open access and charter operators) or to otherwise protect passengers and/or taxpayers?**

There is a need to better protect the interests of the investment made by the public sector into the rail asset. There are currently three open access passenger service operators which provide services on the East Coast Main Line. Whilst open access operators have been successful in growing markets such as Hull and Bradford to London, and improving connectivity to places which would not otherwise be served such as Sunderland, Hartlepool, Morpeth and Beverley, there is a need to consider their implications alongside other demands for the limited paths available. The rights set out in those access agreements will inevitably impact on the choices available for the East Coast Main Line in maximising the public benefit. Specifically, at a time when the market for rail services continues to change and evolve, it is essential that the operations of open access operators are aligned with the public outcomes sought for the area they serve.

Open access services therefore need to be considered in the round together with freight and contracted passenger services in allocating train paths and in planning improvements so that the desired level of service is provided and the benefit of public investment in the infrastructure is maximised for the community.

We would expect GBR and its contractors to be subject to Freedom of Information Legislation in the same way as Network Rail currently is. This is important in ensuring transparency and in giving the public the option to request appropriate information on the rail system.

**Question 12 How should we ensure that Great British Railways is able to fulfil its accountability for the customer offer while also giving independent retailers confidence they will be treated fairly? (paragraph 2.61) Please explain.**



The way that customers buy rail tickets has changed enormously in recent years, with considerable innovation being shown. Such innovation should continue to be encouraged; however, this needs to be in the context that public sector bodies such as TfN should have the right to have access to user information.

GBR will have a key role to play in enabling innovation. However, it should also ensure that where customer services are being provided by independent retailers, they (the retailers) should be held accountable for ensuring that the information supplied is accurate, reliable, and up-to-date.

**Question 13 Does the proposed governance framework give Great British Railways the ability to act as a guiding mind for the railways, while also ensuring appropriate accountability? (paragraphs 3.13) Please explain.**

We consider that the proposed governance framework is appropriate, subject to there being an additional requirement placed on GBR to formally consult with statutory Sub-national Transport Bodies established in accordance with Section 102E of the Local Transport Act 2008.

In order to maximise the benefit of GBR as the single guiding mind it is essential that statutory bodies with devolved responsibilities are represented on the GBR Board. TfN as such a statutory body would seek representation on that basis.

**Question 14 Do you agree with the proposal for Great British Railways' new duties to be captured in the licence and that primary legislation should require the licence to include specific duties in relation to accessibility, freight and the environment? (paragraph 3.16) Please explain.**

On the basis that the amendments set out in response to Questions 1 and 2 (which relate to the core functions of GBR and the core requirements to be placed upon it) TfN supports the proposal for GBR duties to be captured in the licence. There should be a meaningful consultation on the proposed content of the GBR Licence, for the reasons set out in earlier responses

**Question 15 Do you support the proposal to amend ORR's powers to exclude the ability to impose a financial penalty on Great British Railways for licence breach? (paragraph 3.26) Please explain.**

Both the ORR and GBR will be publicly funded bodies, so any financial penalty imposed on one by the other is in effect one part of the public sector penalising another. Such an outcome would result in avoidable costs (and bureaucracy) being added which appears counter-productive to the intent of the rail transformation.

We note that ORR will still be able to fine GBR if it disregards a decision made by ORR relating to access or charging however these seems to have the same neutral impact on the overall public purse.

The need to establish an effective mechanism for holding GBR to account is important given GBR has considerable influence over rail issues and is arguably

a monopoly. The safeguards in Paragraph 3.27 need to be sufficiently robust to have teeth and to encourage compliance. Consideration should be given as to whether any alternative non-financial enforcement measures could be devised given the limitations of financial penalties noted above.

It is also important that GBR is held to account at the regional as well as national level given its devolved structures. Given that the Secretary of State has devolved responsibility for preparing the Strategic Transport Plan it would be appropriate for the TfN Board to have a formal role in this regard.

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

As set out in our response to earlier questions TfN already has some devolved responsibilities in respect of the granting of franchise agreements for passenger services, and the right to enter into arrangements with the Secretary of State relating to the management of rail franchise agreements – including business planning. TfN expects that where the Secretary of State devolves his responsibility in such matters to GBR there would be a requirement on GBR to continue to honour and respect the current level of devolution – including in respect of business planning.

**Question 17 Will the proposed approach to independent scrutiny and challenge provide sufficient transparency and assurance that Great British Railways can be held to account? (paragraphs 3.45 – 3.47) Please explain.**

Please see the comments in reply to Question 15.

**Question 18 Do you support the proposal to give ORR a statutory power to levy a fee on Great British Railways to cover the costs of ORR's functions which are currently funded through the network licence? (paragraph 3.48) Please explain.**

No. A regulatory body should not be in a position where it is obliged to levy a fee on a body which it regulates in order to provide its funding. It should be funded separately. Similar to the point about financial penalties in answer to Question 15, any transfer of funds between GBR and ORR would be counter-productive and inconsistent with the objective of simplifying processes.

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

These changes appear to be appropriate. It is important that Transport Focus is sufficiently resourced by Government to fulfil this role, noting that it now oversees bus and road travel in addition to its original rail focus.

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

For this to be effective, it is important that accessibility is measured at the right level: i.e. at individual station and rail vehicle level as this is what users face. The use of network-wide or large area statistics have little meaning. TfN and its local partners can feed in data to support the consideration of accessibility and provide a local perspective on needs if required.

Accessible stations with level boarding should be the expectation for rail users. This will be provided on Merseyrail when the new fleet of trains is introduced shortly. Significant funding is being spent on new fleets in various parts of the country and this should be matched by investment in infrastructure to allow easy access for all. This particular example further illustrates the potential benefits of innovation in the procurement of rolling stock by public bodies.

**Question 21 Do you support the proposal to expand DPTAC’s remit to become a statutory advisor to Great British Railways, as well as to the Secretary of State, on matters relating to disability and transport? (paragraph 4.15) Please explain.**

Yes, we support this proposal. However, TfN as a statutory body also has a valuable role to play in this regard, and that should be taken into account. We also note that page 16 states “We are reviewing and removing train announcements that add unnecessary noise and disruption to journeys” - decisions such as these need to ensure the implications for the visually impaired, those hard of hearing or people with learning needs are therefore fully considered.

**Question 22 In addition to providing Great British Railways with powers to make “permitted information disclosures”, are there any other revisions to the Railways Act 1993 or barriers to promotion of open data that you consider need to be addressed? Please explain.**

We do not consider that any further revisions are required.

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

We support the proposal. The legislation needs to provide for flexibility and to recognise that there are different approaches to rolling stock provision and the legislation should support rather than hinder this. As examples in the North of England, the Liverpool City Region Combined Authority has acquired and funded a new fleet of Class 777 trains to completely replace the old electric rolling stock operated by Merseyrail. This fleet is locally owned by the public sector and not by a rolling stock company. Similar approaches have been used to acquire vehicles for the various light rail and tram networks in the North.

**Question 24 (see Impact Assessments) Are there impacts, or risks of the policies proposed which have not been covered by the impact assessments? Please explain or provide evidence.**

**Question 25 (see Impact Assessments) Do you have evidence relating to the impacts and risks identified and discussed in the impact assessments? Please provide it to us.**