
Meeting: Transport for the North Board
Subject: Rail Reform Pre Bill Scrutiny
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1. Purpose of the Report

- 1.1 To seek the Board's approval for Transport for the North's (TfN) proposed submission to the Transport Select Committee's call for written evidence on the draft Rail Reform Bill.

2. Recommendations

- 2.1 It is recommended that the Board approve the submission to the Transport Select Committee as set out in Appendix 1.

3. Context

- 3.1 The TfN Board has previously set out its support for the principle of rail reform, and the need to bring train and track together. In keeping with the principles embedded within the revised Strategic Transport Plan, rail reform must put the needs of the customer (both individual and freight users) at the heart of the rail system.
- 3.2 The operational model that is ultimately established to implement rail reform must embrace a culture that better reflects rail's role in meeting wider societal outcomes. Bringing the customer closer to the railway through devolved arrangements remains at the heart of improving outcomes.
- 3.3 The TfN executive continues to work with partners in developing the North's proposals as to what an appropriate operating model might look like for future consideration by the Board. This should build on the current levels of rail devolution that exist in the North and through which it has been possible to ensure the needs of the North's rail users are better reflected in operational and investment decision-making.
- 3.4 The focus for this discussion is the need for TfN to respond to the publication of the draft Rail Reform Bill and its pre-legislative scrutiny by the Transport Select Committee.

4. Background

- 4.1 Building on the Plan for Rail White Paper (published in May 2021), the government has published [the draft Rail Reform Bill](#), starting a process of 'pre-legislative' parliamentary scrutiny. This scrutiny will be led by the Transport Select Committee, who have issued a call for written evidence. The deadline for submissions is 27th March 2024.
- 4.2 It is highly unlikely that there will be sufficient parliamentary time to pass the Bill prior to a general election. However, there remains cross-party consensus on the need for reform and the pre-legislative scrutiny process provides the opportunity to set out the key issues that any reform process must address.
- 4.3 This paper provides an overview of TfN's response to the Select Committee's call for evidence, which focuses on three themes:

- Protecting TfN's existing role and responsibilities,
- Avoiding unintended consequences; and
- Advancing devolution.

5. The Integrated Rail Body/GBR

5.1 What the Bill Proposes

- 5.1.1 The draft Bill enables the creation of an 'integrated rail body' (IRB), which would hold responsibilities for rail franchising (currently held by the Secretary of State) and simultaneously hold infrastructure manager responsibilities (currently held by Network Rail).
- 5.1.2 It is proposed that Network Rail is designated as the IRB and transferred franchising responsibilities, at which point it will become Great British Railways (GBR). Whilst the rationale for this approach is understood, it increases the risk that the culture of GBR is overly shaped by that of Network Rail.
- 5.1.3 The Bill makes no reference to the role of statutory Sub-national Transport Bodies such as TfN or their responsibilities. These include the provisions set out in the Rail North Partnership Agreement which devolves joint responsibility for overseeing the Northern and TransPennine Express contracts (previously let as franchises), and which is overseen by those members of TeamTfN employed as the executive part of the Rail North Partnership. It is under the terms of the Rail North Partnership Agreement that the North-East and North-West Business Units have been established as a means of increasing the role of local partners in shaping rail services. The pre-legislative scrutiny process is a key opportunity for TfN to ensure that current levels of rail devolution in the North are not undermined by a new national organisation.

5.2 How will Great British Railways operate?

- 5.2.1 While the Bill enables the establishment of GBR, it does not go into detail about GBR's proposed operating model. There are elements of the Bill which steer GBR towards a model of private sector contracting for rail services – but the details of how this would be carried out are not defined.
- 5.2.2 While TfN's submission to the Select Committee will focus on the specifics of the Bill, it is clear that GBR's future operating model will be hugely significant as to whether it realises the objective of the railway to perform better as a system with less fragmentation and greater accountability. As set out above, we will be engaging with TfN partners across the North with a view to enabling a considered discussion as to the North's preferred future operating model. Any future operating model will be consistent with TfN's commitment to 'double devolution', including working with Mayoral Combined Authorities, who may also have a direct relationship with GBR as part of devolution deals.

6. Key Considerations

6.1 Protecting TfN's role as a Statutory partner of the Secretary of State

- 6.1.1 Today, TfN exercises a number of devolved functions as a statutory Sub-national Transport Body, responsibilities which were established by [the Sub-national Transport Body \(Transport for the North\) Regulations 2018](#) ("the Regulations"). These Regulations are unaffected by the draft Bill.
- 6.1.2 Although TfN's statutory status is unaffected by it, the Bill proposes changes to the Secretary of State's role in the railway. TfN's constitution is explicit that it is a statutory partner to the Secretary of State in respect of the rail investment process. Specifically:

- (i) In developing and agreeing their strategic transport plan TfN will, as a statutory partner in the Secretary of State's investment processes, determine the North's objectives and work jointly with the Secretary of State to ensure they are incorporated in the Secretary of State's national prioritisation decisions.
- (ii) Whilst the Secretary of State remains the final decision maker, decisions related to the North will have to take account of TfN's priorities.
- (iii) Following the Secretary of State's final decisions, TfN will ensure, through formal bi-lateral arrangements with the Department for Transport that the North's priorities are understood and recognised in national decision making with respect to Network Rail investment.

6.1.3 Under the proposed Bill, the responsibilities for rail franchising will transfer from the Secretary of State to the Integrated Rail Body. The Bill, in many instances, substitutes the Secretary of State for the IRB in order to reflect the IRB's proposed central role in the railway.

6.1.4 However, it is important to be clear that TfN should retain its statutory partner role with the Secretary of State. The Secretary of State should remain the relevant counterpart for TfN's strategic advice in all circumstances, and where relevant ensure that the IRB is appropriately informed. It would be unacceptable for the IRB to be a substitute for the Secretary of State with respect to TfN's statutory partner role.

6.2 *Ensuring continuation of existing devolved arrangements*

6.2.1 A key part of rail devolution in the North has been the Rail North Partnership Agreement ("the Agreement"), and the associated establishment of the Rail North Partnership Board. This is a contractual arrangement, between the Secretary of State (in their function as lead franchising authority) and TfN (since it absorbed Rail North Ltd in 2018). The Agreement provides for TfN to oversee the delivery of rail services provided by the TPE and Northern contracts, in partnership with the Secretary of State. Implementation of the Agreement is overseen through a dedicated team (the Rail North Partnership) employed by TfN.

6.2.2 The Agreement sets out a range of 'TfN Matters' on which TfN partners benefit from enhanced consultation. For example, recently, it was through the Rail North Partnership that TfN and its partners had an extended period of consultation for the proposed ticket office closure plans. It also enables TfN to propose further devolution, where TfN may put forward proposals to enhance existing arrangements and adopt additional responsibilities with regard to the management of the franchises/contracts where this improves the efficiency and effectiveness of delivery.

6.2.3 TfN's co-management role through the Rail North Partnership is a contractual agreement between TfN and the Secretary of State. As the Secretary of State will no longer be a franchising authority and the IRB assumes this role, it is an essential requirement of TfN that it receives assurance that existing arrangements will be novated to provide a continued role for devolved input through TfN and its constituent authorities.

6.2.4 Furthermore, TfN's constitution also ensures that TfN has the right to be consulted over the grant of a rail franchise agreement for passenger services within, to and from the TfN area and the right to enter into arrangements with the Secretary of State relating to the management of rail franchise agreements. It is TfN's clear expectation that this right continues to be held with regard to the IRB's future role in arranging rail service contracts in the North.

6.3 *Avoiding Unintended Consequences through Ticketing Amendments*

- 6.3.1 The majority of existing work on fares, ticketing and retail undertaken by Great British Railways Transition Team (GBRTT) has no requirement for primary legislation.
- 6.3.2 However, the Bill reforms elements (section 134 on advanced ticketing schemes through to section 137) of the Transport Act 2000 on the creation of Advanced Ticketing Schemes. The Bill adds wording to the effect that the new IRB is the body through which local authorities need to engage with, should those schemes entitle the holder to travel on rail services.
- 6.3.3 These powers referred to in the Bill are also powers that TfN can exercise concurrently with Local Authorities under the Regulations agreed by Parliament. While to date TfN has never exercised those powers, it is important the Bill does not create muddled lines of accountability for such ticketing schemes. Where TfN establishes such a scheme, there should be no requirement for local authorities to also have to engage with the IRB. If not addressed this would inadvertently create a loop whereby individual bodies are required to consult with one another.

6.4 *Proposed Role of the Private Sector*

- 6.4.1 The draft Bill includes a number of measures to protect the private sector's role in the railway, particularly in the provision of railway services, including:
- The IRB must ensure that its business plan takes its proposed impact on businesses in the private sector into account.
 - There is a requirement on the IRB to prepare a report setting out what it has done during each financial year to increase the involvement of businesses in the private sector in the provision of railway services.
 - The Bill amends the rail regulator's duties to require the regulator to balance the promotion of competition with a consideration of the cost, to public funds, of providing passenger services.
- 6.4.2 Given the scale of investment required to deliver a transformed rail system in the North there will be significant benefit from being able to secure investment from the private sector. In this context, there should not be an arbitrary preference of the ownership of service provision (whether public or private). Instead, there should be a focus on ensuring the best value possible in securing the outcomes required from the railway in order to meet the North's ambitions. It is also important to note that these provisions may be considered as reporting obligations, rather than explicit policy directions.

6.5 *Advancing Devolution*

- 6.5.1 The current arrangements in the North already represent a significant devolution of powers. They allow the North to have a strong role in the specification and delivery of rail services, as well as require the Secretary of State to have due regard to statutory advice. They have also allowed – through the establishment of Regional Business Units in the North-East and North-West – an enhanced role in local rail services.
- 6.5.2 TfN supports the rail reform White Paper's commitment for closer collaboration with Great British Railways. However, neither the White Paper, nor the Bill reflects the role of statutory Sub-national Transport Bodies when considering future governance and operating models.
- 6.5.3 Given this context, there are two specific points that examination of the draft Bill must consider:
- a) The need to ensure that the IRB operating licence has an explicit requirement placed on the IRB to formally seek, and respond to advice from

a statutory Sub-national Transport Body (such a requirement would be consistent with the Transport Select Committee's recommendation in respect of the operating licence for National Highways)

- b) Similarly, the Office of Rail and Road (ORR) should be required to formally seek, and respond to, advice from a statutory Sub-national Transport Body when discharging its duties in relation to the rail system.

- 6.5.4 Whilst these points are made specifically in the context of the arrangements that exist in the North, it should be noted that a number of the other Sub-national Transport Bodies are actively working on proposals to secure statutory status. Accordingly, the proposed changes are relevant more widely to the operation of the rail system in England.

7. Corporate Considerations

Financial Implications

- 7.1 There are no direct financial implications as a result of this report. Any financial implications of Rail Reform will be considered subsequently as part of the development of a proposed operating model.

Resource Implications

- 7.2 There are no resource implications as a result of this report. Any resource implications of Rail Reform will be considered subsequently as part of the development of a proposed operating model.

Legal Implications

- 7.3 Legal Services has been consulted in relation to the Rail Reform Bill and the proposed response to the Transport Select Committee. The legal implications of the draft bill for TfN have been included in the main body of the report.

Risk Management and Key Issues

- 7.4 There is a corporate risk in relation to TfN's future role in the rail industry. Responding to the draft Bill will be a mitigating action in relation to this risk.

Environmental Implications

- 7.5 There are no environmental implications as a result of this report. Rail is a fundamental part of TfN's strategic approach to decarbonising the transport network.

Equality and Diversity

- 7.6 There are no equality and diversity implications as a result of this report.

Consultations

- 7.7 Executive Board were consulted in the preparation of this paper and draft response.

8. Background Papers

- 8.1 None.

9. Appendices

- 9.1 Appendix 1: TfN's proposed submission to the Transport Select Committee

Glossary of terms, abbreviations and acronyms used

a) IRB	Integrated Rail Body
b) GBR	Great British Railways
c) GBRTT	Great British Railways Transition Team

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d) <i>TPE</i> <i>TransPennine Express</i>
