

Submission of Transport for the North

Transport Select Committee Call for Evidence on the Draft Rail Reform Bill March 2024

1. Introduction

Statutory Sub-National Transport Body

1.1. Transport for the North (TfN) is a statutory Sub-National Transport Body established by Government (pursuant to secondary legislation; namely [the Sub-national Transport Body \(Transport for the North\) Regulations 2018](#) (“the Regulations”) made on 22nd January 2018) and whose functions include:

- a) To prepare a transport strategy for its area
- b) To provide advice to the Secretary of State about the exercise of transport functions in relation to its area (whether exercisable by the Secretary of State or others)
- c) To co-ordinate the carrying out of transport functions in relation to its area that are exercisable by different constituent authorities, with a view to improving the effectiveness and efficiency in the carrying out of those functions.

Transport for the North Board

1.2. The TfN Board (the Board) is the voice of the North of England for transport; it is formed of elected leaders, and business leaders from across the whole of the North of England. It collectively represents over 15 million people in the North.

1.3. Complementing the work of Metropolitan Combined Authorities (MCAs) and Local Transport Authorities (LTAs), and with powers devolved from central Government to the North, our statutory role as the Secretary of State’s advisor is to advise Government in a way that ensures that funding and strategic decisions about transport in the North are informed by local knowledge, expertise and needs.

1.4. Alongside local political leaders, our Board also has representatives from the national delivery transport partners (Network Rail and National Highways) and works closely with our neighbours in Scotland, Wales and the Midlands.

The Rail North Partnership

1.5. TfN has devolved rail powers through the Rail North Partnership. There is a contractual agreement in place between the Secretary of State and TfN (initially Rail North Limited). This agreement (“the Rail North Partnership Agreement”) provides for the devolution of rail responsibilities in the North of England and the oversight by TfN of the delivery of rail services provided by the TransPennine Trains and Northern Trains contracts, in partnership with the Secretary of State. Implementation of the Agreement

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is overseen through a dedicated team (the Rail North Partnership) employed by TfN.

- 1.6. Provision exists under the Rail North Partnership Agreement to establish sub-regional business units which allow for a stronger input from local partners in geographically defined areas. At present, two such business units have been established – one for the North-East, the other for the North-West. These enable stronger co-ordination of local rail services with other local transport services, whilst retaining the benefits of the pan-regional overview provided through the Rail North Partnership Agreement.

Statutory Partner on Rail Investment

- 1.7. TfN acts as a statutory partner to the Secretary of State with respect to rail investment. This role ensures that decisions related to rail investment in the North have to take account of TfN's priorities, and that they are recognised with regard to Network Rail's decision-making.

2. General Comments

- 2.1. TfN supports the need for rail reform and in particular the integration of track and train to deliver better outcomes for passengers and freight customers. As such, TfN welcomes the Bill as an important step to creating Great British Railways (GBR).
- 2.2. The reshaping of the railway's institutional architecture must respect and build upon the existing devolved arrangements at the pan-regional level in the North. TfN has the most advanced devolved arrangements of any statutory Sub-National Transport Body (STB) in England, which in combination with our experience of overseeing the delivery of train service contracts enables TfN to offer practical, real-world experience of how to realise the overarching ambition for GBR.
- 2.3. In this respect TfN's experience is potentially a template upon which to develop arrangements associated with other statutory STBs, of which there are at least two working towards propositions for statutory status. TfN's experience of 'double devolution' – which sees stronger involvement at both the pan-regional and MCA/LTA level – could form the basis of a working model that could be applied more widely across England.
- 2.4. TfN's role as a statutory partner to the Secretary of State in relation to the rail network, as set out in its constitution approved by Parliament, must be retained. By extension, there should be a requirement for GBR to actively seek and respond to advice from a statutory Sub-National Transport Body.
- 2.5. The continuation of the contractual arrangements between TfN and DfT which form the Rail North Partnership Agreement need to be maintained moving forward. TfN has established strong and effective collaborative arrangements that enable the North's input into how the Northern and TransPennine Trains contracts are managed. By extension, the complex nature of the rail system across the North makes it increasingly important

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to have TfN's input into the delivery of other service contracts and/or franchises.

- 2.6. It is therefore important that the Bill does not create unintended consequences through the blanket transfer of franchising powers from the Secretary of State to the Integrated Rail Body (IRB). TfN's existing arrangements reflect its statutory relationship as the Secretary of State's partner. TfN would expect its relationship, and role, in providing advice to the Secretary of State is maintained, in addition to there also being a requirement on the IRB to actively seek and engage with TfN.
- 2.7. Recognising the limited focus of the Bill it will be essential that subsequent development of proposals for the operating model for GBR is done in collaboration with TfN given our statutory and contractual roles. It is essential that the intention of devolving responsibility away from Westminster and empowering the rail system to deliver remains at the heart of the operating model.

3. Respecting and Maintaining TfN's Statutory Role

- 3.1. TfN exercises a number of devolved functions as a statutory Sub-National Transport Body, responsibilities which were established by the Regulations. These Regulations are unaffected by the draft Bill.
- 3.2. 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.
- 3.3. Under the proposed Bill, responsibility for rail franchising will transfer from the Secretary of State to the IRB. The Bill, in many instances, proposes to amend the overarching legislation to substitute the Secretary of State for the IRB, in order to reflect the IRB's proposed central role in the railway.
- 3.4. 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

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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 in respect of receipt of TfN's statutory advice as defined in the Regulations.

4. Ensuring Continuation of Existing Devolved Arrangements

- 4.1. A key part of rail devolution in the North has been the Rail North Partnership Agreement, enabling a stronger input from the region and its partners into the planning and delivery of rail services.
- 4.2. The Agreement 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).
- 4.3. 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 Rail North Partnership Agreement is overseen through a dedicated executive team (the Rail North Partnership) employed by TfN, reporting to both TfN and DfT.
- 4.4. The Agreement sets out a range of 'TfN Matters' on which TfN partners benefit from enhanced consultation. For example, 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 allowed TfN to consider the proposals in the round, rather than through just the remit set by Transport Focus.
- 4.5. The Agreement also enables TfN and its partners to put forward proposals to the Secretary of State to enhance existing devolution arrangements and propose additional responsibilities regarding the management of the franchises/contracts where this improves the efficiency and effectiveness of delivery to the benefit of the user.
- 4.6. TfN's co-management role through the Rail North Partnership Agreement 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.
- 4.7. 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 under the IRB's proposed role in arranging rail service contracts in the North.

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5. Avoiding Unintended Consequences through Ticketing Amendments

- 5.1. The majority of existing work on fares, ticketing and retail undertaken by Great British Railways Transition Team (GBRTT) has no requirement for primary legislation.
- 5.2. 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.
- 5.3. 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. Advancing Devolution

- 6.1. 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 requiring the Secretary of State to have due regard to TfN's 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.
- 6.2. TfN will want to use the existing devolution arrangements in the North to further strengthen the role of its partners, consistent with the aim of national rail reform for an enhanced role for local partners. It is therefore essential that the Bill, and subsequent operating model, explicitly reflects the 'double devolution' that is already in existence in the North.
- 6.3. In addition, as part of the commitment to build on existing devolution for rail, 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.

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6.4. 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. Summary

- 7.1. While the transition from the railway's current institutional architecture to an integrated rail body is a welcome and positive step forward, it is important that it respects existing statutory duties and contractual arrangements.
- 7.2. Devolution arrangements in the North are set out in the appropriate regulations adopted by Parliament. TfN's role is vital to ensuring that GBR is set up to deliver the outcomes it seeks to achieve in the North, namely greater accountability, greater coordinated growth, more reliable services and greater efficiency.
- 7.3. The Transport Select Committee is asked to ensure that through its pre-legislative scrutiny TfN's existing roles and responsibilities are respected and maintained.
- 7.4. Detailed responses to the questions set by the Transport Select Committee that relevant to TfN are set out in the following pages.

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1. The Integrated Rail Body

If enacted, would the draft Bill provide the necessary legislative foundations for an integrated rail body with franchising powers (Great British Railways), as envisioned in the Plan for Rail?

- 1.1. Yes, the Bill would provide sufficient foundations for this.
- 1.2. However, the plan to designate Network Rail as the integrated rail body to create Great British Railways raises questions as to whether the culture of the organisation appropriate for a customer focused organisation.
- 1.3. While the rationale for this approach is understood, it is vital that there is a significant and sustained emphasis on transforming Network Rail behaviours from an engineering-led culture to a customer-led culture. This is essential to ensure the rail network is used to its fullest potential. It is therefore essential that the new IRB establishes a culture that is customer-focused and can act as a guiding mind for the industry.

Will the integrated rail body (IRB), as proposed in the draft Bill, achieve the Government's aim of a 'guiding mind', providing: (i) better accountability, (ii) more reliable services, (iii) greater efficiency, and (iv) coordinated growth, across both passenger and freight sectors?

- 1.4. While the Bill will enable the establishment of a more effective structure in which to achieve these objectives, they are not guaranteed outcomes. The IRB's operating model will be the largest determining factor of whether it is successful in meeting these objectives – details around this are (currently) not well established.
- 1.5. The devolved responsibilities that TfN holds serve as a basis for achieving these objectives but the operating model will need to evolve to make the most of the benefits of integration that GBR can provide. To ensure that the future operating model is successful, it must:
 - deliver better outcomes for passengers and freight customers;
 - ensure greater local accountability; and
 - be geared towards growth.
- 1.6. Ultimately, the structure of the industry in the North will need to support delivery of the vision set out in TfN's Strategic Transport Plan (STP) of transformed economic performance, decarbonisation of surface transport and enhanced social inclusion and health. TfN is working with partners across the North to set out its aspirations of what this will look like.
- 1.7. The establishment of an IRB will not necessarily achieve the outcomes envisaged. It is important that the IRB is sufficiently steered towards the right objectives by being held accountable through 'double devolution' at both the pan-regional and city-region level. The existing arrangements in the North could reasonably provide the basis for developing an effective operating model.

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Would the provisions of the draft Bill establish an IRB with the independence and accountability to achieve its aims? If not, what amendments would be needed?

- 1.8. While the IRB will be accountable to the Secretary of State, the Bill should also recognise the role of statutory Sub-National Transport Bodies (STBs) as the locus for pan-regional accountability.
- 1.9. Equipped with local expertise and singular focus on the North, TfN has been a highly effective driver of scrutiny and accountability of rail services and rail investment. This accountability takes place through well-established governance such as TfN's Rail North Committee and its Board and is backed by authoritative modelling, data, and analysis.
- 1.10. The IRB's accountability cannot be assured without a clear role for statutory STBs – such as TfN. An appropriate amendment to the Bill, would be that the IRB is required to formally seek and respond to advice of a statutory Sub-National Transport Bodies as a condition of its network licence.

Are the arrangements set out for the granting and amendment of the IRB's licence and the inclusion of specific conditions within that licence appropriate?

- 1.11. No. The Bill as drafted fails to take account of the role of statutory STBs in the railway's future governance and operating arrangements.
- 1.12. A condition of the IRB's network licence must be that the IRB is required to formally seek and respond to advice from statutory STBs. Such a requirement would be consistent with the Transport Select Committee's recommendation in respect for National Highways.
- 1.13. As more Sub-National Transport Bodies seek statutory status, this is a point which is not just reflective of the desired arrangements for the North but increasingly across the whole of England.
- 1.14. The lack of recognition for Sub-National Transport Bodies aside, the requirement of the network licence to include specific conditions in relation to freight, accessibility, the environment, and social and economic benefit are welcome and consistent with TfN's own strategic objectives.

What will be the effect of the requirement on the IRB to prepare an annual report setting out what it has done to increase private sector involvement in the running of railway services?

- 1.15. Given the scale of investment required to deliver a transformed rail system in the North, there will be a need to secure investment from the private sector. In TfN's view, there should not be an arbitrary preference for the ownership of service provision (whether public or private).
- 1.16. Instead, there should be a focus on ensuring the best value possible in securing the outcomes required from the railway to meet the North's

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ambitions as defined in terms of economic, social, and environmental outcomes.

- 1.17. It is also important to note that this requirement may be considered as reporting obligation, rather than explicit policy direction. It is likely that the operating model adopted by GBR will be a more significant determinant of private sector involvement rather than the proposed annual report.

What arrangements should be put in place for scrutiny of the IRB's business plan?

- 1.18. Reflecting the Office of Rail and Road's (ORR) role today in scrutinising Network Rail plans and activities as part of the periodic review process, the ORR should lead on the scrutiny of the IRB's business plan. The ORR must assess the IRB's activities against its outputs agreed, ensuring that outputs agreed are affordable and deliverable.
- 1.19. In addition, TfN proposes that the Bill should be amended to require the IRB to formally seek and respond to advice from statutory STBs. The IRB should therefore be required to reflect any advice from a STB in its business plan. The ORR, in their capacity of holding the IRB to account, should also ensure that the IRB sufficiently reflects the deliberations of any statutory STB in their business plan.

Are there further elements of the Government's aims for the IRB that should be given a statutory footing?

- 1.20. No comment.

2. Other provisions

Are the interests of passengers and freight users sufficiently promoted by the provisions of the draft Bill?

- 2.1. As mentioned previously, the customer interest in the railway must be advanced in the culture of GBR. The proposed network licence conditions to include specific conditions in relation to freight, accessibility, the environment and social and economic benefit are also useful in this regard.

Does the draft Bill make effective provision for the role of the Office of Rail and Road?

- 2.2. The Bill as drafted misses the need for the Office of Rail and Road (ORR) to have consideration for the role of statutory STBs in the future governance of the railway – this is an important aspect of securing greater accountability.
- 2.3. ORR should be required to formally seek, and respond to, advice from a statutory STB when discharging its duties in relation to the rail system. This includes the duty of ensuring that the IRB sufficiently reflects the deliberations of any statutory STB in their business planning process.

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What assessment should be made of the draft Bill's provision that the Scottish and Welsh governments may arrange for the IRB to exercise their devolved franchising powers?

2.4. No comment.

What will be the effect of the implementation in UK law of the Luxembourg Rail Protocol? Is the range of powers granted to the Secretary of State in clause 15 necessary to achieve the aims of the Protocol?

2.5. No comment.

3. General

Are the delegated powers envisaged by the draft Bill necessary and sufficient to meet its aims?

- 3.1. The delegated powers under Part A, Delegated Power 4 to make consequential amendments are essential to avoid unintended consequences of the Bill.
- 3.2. It is important that delegated powers are sufficiently strong to ensure a smooth transition to the IRB functioning as a guiding mind. One such example is that 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.
- 3.3. These powers referred to in the Bill are also powers that TfN can exercise concurrently with Local Authorities under the 2018 Regulations agreed by Parliament. While to date TfN has never exercised those powers, it is important that the Bill does not create muddled lines of accountability for such ticketing schemes.
- 3.4. Where TfN (working with its partners) establishes such a scheme, there should be no requirement for local authorities to also have to engage with the IRB. If this is not addressed in the draft Bill, it would inadvertently create a loop whereby individual bodies are required to consult with one another.
- 3.5. Delegated powers under Part C are essential for the smooth handover of any rail contract let under the Secretary of State to the IRB. These powers are essential for ensuring that there are continued devolved arrangements in the North.
- 3.6. TfN is keen to work with GBR and the Department for Transport in overseeing the transition from the current Rail North Partnership Agreement with the DfT to a new partnership with GBR.

What lessons should be learned from previous legislative changes to the institutional architecture of the rail sector?

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3.7. No comment.

Are there further provisions within the draft Bill that the Committee should focus its scrutiny on?

3.8. No comment.

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