Consultation on legislation to implement Rail Transformation

Campaign for Better Transport response to Department for Transport consultation

July 2022

About us

Campaign for Better Transport is the national charity championing greener, fairer transport solutions. Our vision is for all communities to have access to high quality, sustainable transport that meets their needs, improves quality of life and protects the environment.

Summary

Campaign for Better Transport supports the Government's plans for creating Great British Railways as an integrated organisation, acting as a 'guiding mind' for the rail network and industry. However, we have concerns about the impact that the proposals will have on open access operators, and therefore competition and passenger service. We also feel that the Office for Rail and Road (ORR) should be stronger in certain areas, such as the power to compel contracted operators, issuing fines for poor performance, and oversight of fairness.

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.

Campaign for Better Transport welcomes the concept of an integrated rail body to provide overarching organisation of the railways and more effectively manage the network and access to it. We welcome the commitment to promote open data, provide accountability to passengers, and place emphasis on the obligation to deliver high-quality, reliable services.

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.

No, we feel the scope of the proposals is sufficiently encompassing.

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.

Setting local transport policy and priorities is an important element of the devolution settlements. The Williams-Shapps Plan proposes to strengthen devolved railways through closer collaboration in order to improve services. It proposes new partnerships in England to give towns, cities and regions greater control. This focus on local and devolved involvement is important to prevent a national organisation adopting a 'top-down' approach and ensuring consistency and co-ordination across Great Britain. We support the commitment to respect this by proposing legislation which enables but does not require Scottish and Welsh ministers to delegate contracting authority to Great British Railways (GBR).

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 agree with this as it is important to ensure good value for money for the taxpayer. However, Campaign for Better Transport also supports allowing public sector bidders being able to participate in competitions.

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

Campaign for Better Transport does not feel that EU Regulation 1370/2007 needs to be retained, nor do we object to the amendments proposed.

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.

The ORR plays an important role in regulating the rail industry's performance, holding Network Rail and HS1 to account, and ensuring the railways are run competitively and fairly. Given the scope of Great British Railway's remit and its objectives under the Williams-Shapps Plan, we agree that the ORR should have a statutory duty to expediate GBR's policies on railway access and use. However, we feel it is important to ensure that the ORR does not have to deny track access for open access operators for which the not primarily abstractive test has been passed, but GBR argues there is no spare capacity on a line.

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.

No.

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.

Campaign for Better Transport has concerns about this proposed recasting. It appears obliquely to be designed to squeeze open access operators out of the market, yet we have seen, for example from Lumo, that the innovation of open access operators has driven higher passenger numbers and widened competition generally.

Since 2005 there has been a significant increase in the number of passengers opting for rail rather than air travel between London and central Scotland. The market share for rail journeys from Edinburgh and Glasgow to London has increased 65%. With 100% electric rolling stock, Lumo provides a greener link between London and Edinburgh. Importantly, in encouraging passengers to opt for the train, Lumo is offering single fares from £14.90. Given the centrality of price as a determining consideration for travellers (particularly as the cost-of-living rises) this offers a serious alternative to budget flights provided by airlines.

This proposal would appear to narrow the scope for competition, rather than widening it as the title suggests.

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)

A fundamental element of Great British Railways as an oversight body and integrating organisation must be to ensure that contracted operators collaborate and cooperate for the most efficient running of the railways. Campaign for Better Transport supports statutory powers which can compel collaboration when it would improve operational delivery, passenger services, and ensure better value for taxpayers.

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?

We feel this raises clear issues around commercial confidentiality. We recommend that rather than GBR having the power to enforce its will on contracted operators, that the ORR hold the statutory powers.

The proposed legislative approach also provokes questions over engagement with and effect on the elements of the rail industry outside of GBR, namely freight operators, the open access operators, and the relevant Scottish and Welsh devolved bodies. It is not clear how GBR will interact with the devolved authorities in England.

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?

Yes, as with the statutory power to compel collaboration, Campaign for Better transport feels that ORR should be the final arbiter of such matters.

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.

Competition is key to ensuring cheaper fares and better service for passengers. However, we recognise that as a public service, GBR will have to provide essential, but commercially unattractive services. In order to fulfil its objectives of effectively managing costs and revenues, while also providing safeguards for the fair treatment of independent retailers, the GBR fares and ticketing operation should operate at arm's length. We recommend that the ORR take a proactive role in ensuring fairness, and not simply offer an appeal mechanism.

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.

Campaign for Better Transport feels that the proposed governance framework based on statute, the Licence, directions & guidance, and a business planning and funding process broadly meets the requirements.

However, it is not clear how HM Government's intention to devolve rail matters to local areas in England will fit in. Nor is it clear what role the ORR will have in relation to disputes between GBR and contracted operators. These need to be addressed if GBR is to be a 'guiding mind' and ensure accountability.

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.

Campaign for Better Transport strongly supports including the news duties in the Licence and that it should be laid down in primary legislation. Sustainable transport is our raison d'etre; we therefore welcome statutory duties on freight, accessibility and the environment – particularly in relation to achieving the UK's Net Zero objectives.

Rail freight has been a significant success story of privatisation and ought to be further developed. Particularly as each freight train removes 76 HGVs from Britain's roads. As well as accessibility in terms of affordability, the Rail Vehicle Accessibility Regulations ought to be strengthened. A network and service which encourages individuals to switch from road and air to the railways is essential – as are taking environmental aspects and carbon emissions into consideration in all aspects of running the service.

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.

We accept the proposed amendment whereby the power of ORR to fine GBR for breach of its licence is removed, but ORR can still fine GBR if it disregards an ORR decision on access or charging. In addition, Campaign for Better Transport would go beyond the Secretary of State considering Great British Railways' performance when considering performance-related pay recommendations. We feel ORR should also have the ability to fine senior management in GBR personally for poor performance.

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

In the answers above, we have raised certain issues, concerns and recommendations we would like to see addressed in the legislation. Otherwise, Campaign for Better Transport broadly supports the proposed arrangements for Great British Railways.

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.

GBR will have a great deal more power than that exercised by Network Rail. Under the proposals, it will not have the counter-balance from the TOCs or from the DfT that has existed to date. Under these circumstances, it is vital that ORR plays a direct role in holding GBR to account. It needs to be continually much more pro-active than it has been previously. There is a case for clear guidance to the ORR from the Government on this point, and a strong need for the Government to monitor more closely the activities of the ORR to ensure it is correctly discharging its regulatory role, particularly regarding economic functions.

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.

Given the enhanced role ORR is play – as well as our recommendations for extending that – it is crucial that ORR is clearly and visibly independent from the Government and potential influence. We therefore support the plan to increase ORR's fee levying powers so that it can fund its functions and responsibilities.

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.

Campaign for Better Transport has doubts about the effectiveness of Transport Focus to fulfil this role. Transport Focus is dependant for its income on a grant from the Department for Transport and is therefore potentially compromised in its ability to make comments and recommendations that might be regarded as inconvenient to the Government.

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.

As stated above, Campaign for Better Transport places emphasis on ensuring and expanding accessibility. In addition to carrying out the proposals stated in the white paper regarding accessibility, we feel that ensuring it is integral to GBR decision-making can be achieved through the role envisaged for ORR.

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.

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 think the barriers which exist are cultural, rather than anything which is governed by legislation. There is a desperate need for more analytical information to be provided around track possessions, for example. Therefore, we press for a change in internal attitudes and approaches, rather than legislative revisions.

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.

The United Kingdom is already a signatory to the Luxembourg Rail Protocol. We do not have strong position on whether primary legislation is additionally necessary.

Thank you for considering Campaign for Better Transport's views. We are happy to elaborate on any of the points made in this submission. For more information, please contact:

Dr. Stephen Goss
Policy and Research Manager
Campaign for Better Transport
E: Stephen.goss@bettertransport.org.uk