

Response to the Department for Transport's (DfT) consultation on Legislation to Implement Rail Transformation

1. Thank you for the opportunity to comment on this consultation. As the sector regulator, the Office of Rail and Road (ORR) will continue to provide independent advice to support effective implementation of government's policy and legislative proposals for reform, while also continuing to focus on the safety, value, and performance of the railways during this period of change.
2. As confirmed by the consultation, ORR will continue to uphold the interests of rail users and taxpayers as the independent safety and economic regulator across the railway in Great Britain. We welcome the endorsement of a strong and broader remit for ORR that will:
 - Provide whole-sector oversight that transparently holds Great British Railways (GBR) accountable against its licence and its track and train business plan.
 - Continue to lead five-yearly periodic reviews of railway funding and outputs, reflecting the needs of both the Secretary of State and Scottish Ministers.
 - Continue to approve and direct access to the network, and to license operators.
 - Continue to enforce competition and consumer law, and now oversee the Rail Ombudsman.
 - Support transparency across the sector, with broad information gathering and investigatory powers, and continuing to publish rail statistics.
 - Continue to regulate health and safety for the entire rail network in Britain.
 - Retain all roles in relation to other networks such as High Speed 1, as well as in relation to open access operators and freight.
3. This letter summarises our views on the reform proposals and the connected non-legislative work that will be needed to implement reform. In the Annex we respond to the specific questions listed in the consultation.

Governance and accountability

4. For GBR to deliver on the government's objectives for reform, it will need to be empowered and accountable. GBR's licence should define its accountabilities and we support the proposals for a comprehensive licence scope and for ORR to have the power to enforce GBR's licence. We consider that the consultation proposals secure appropriate powers for ORR to hold GBR to account effectively across the business. The proposed new statutory power for ORR to

raise a levy on GBR to cover the costs of regulating further supports our independence. See response to questions 13, 14, 15, 17, and 18 in the Annex.

5. The next phase of work will need to clarify which decisions GBR will make, and which will be made by DfT, devolved authorities, or devolved through contracts to operators. This includes reassuring stakeholders, preferably through requirements in legislation, that any Secretary of State power of direction over GBR will be used transparently and that it will not be used to intervene in operational, especially safety critical matters. See Annex, question 13.
6. We support the proposals to retain the periodic review process, including independent assurance over any changes to five-year infrastructure funding and GBR business plans. We also welcome ORR's continuing role in holding rail operators to account for their commitments to passengers and our new role in sponsoring the Rail Ombudsman. See Annex, questions 16 and 20.

Access, competition and collaboration

7. ORR will continue to approve (and where appropriate, to direct) access contracts and to determine appeals on access matters. These will continue to be independent judgements based on all our statutory duties. GBR's new access policy will be crucial in determining the principles for who has access to the railway. It is essential that this policy is publicly consulted on and independently upheld, as recognised in the consultation. The proposed new duty for ORR to 'facilitate the furtherance' of GBR's access policy means we will take account of it in our decision-making. ORR will support DfT and GBR to identify and consult on changes to relevant secondary legislation, industry processes, and agreements on access and charging. See Annex, questions 6 and 7.
8. ORR's duty to promote competition is just one duty we must weigh alongside other duties, but we cannot anticipate the impact of the proposed recasting of this duty on our decisions (which asks ORR to consider the interests of 'funders' alongside 'users'). We want to work closely with DfT and stakeholders to consider potential unintended consequences, for example for freight operators, and to inform the development of any Secretary of State guidance to ORR, which we must already have regard to when exercising our functions. Our Competition Act functions will not be affected by this change and will continue to apply. See Annex, question 8.
9. ORR will continue to independently uphold fair competition in the railway, in line with competition law, concurrently with the Competition and Markets Authority. To support the UK government's ambitions to incentivise a strong role for the private sector in the railway, appropriate safeguards will be needed to ensure GBR exercises its powers in a way that still encourages private participation,



entry, and innovation. For example, the role of open data should be thoroughly explored. See Annex, questions 9 and 11.

Reform implementation

10. The pace of work will need to accelerate, particularly if GBR is to be established in time for the start of the next control period in April 2024. Key policy decisions are needed to fully define roles and responsibilities, develop the GBR licence and funding model. ORR is ready to support this work.
11. During this period of change the railway must continue to deliver for users and taxpayers. ORR will provide advice to DfT on safety: we will undertake assurance around the impact of the overall package of changes on the safety management of the system as a whole. We will continue to seek assurances across the sector by confirming that duty holders are controlling risk effectively.
12. We welcome the confirmation that the next periodic review process (PR23) will continue as planned. PR23 will determine the funding for, and requirements from, the mainline rail infrastructure for 2024-2029. To support effective delivery, when GBR is created, it will need to take on full responsibility with clear accountability for these commitments. We would then expect GBR to progressively develop an integrated track and train business plan incorporating all its commitments.

Yours sincerely

John Larkinson

Chief Executive

Annex: The Office of Rail and Road's (ORR) responses to the questions in the Department for Transport's (DfT) consultation on Legislation to Implement Rail Transformation.

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.

Answer: While the organisational structure and priorities for the railway are a matter for government policy, we agree that the core functions and duties of Great British Railways (GBR) are consistent with the proposal for a new integrated rail body. To maximise the benefits of integrated decision-making across track and train, appropriate and clear accountability will be a key enabler of GBR's success in operating as a guiding mind. This accountability should be underpinned by a licence that encompasses all of GBR's key responsibilities. We note that Network Rail Infrastructure Limited (current licence holder) will be used as the corporate entity that will become the main operating company of GBR. This should make transition simpler, supports the continuation of existing access contracts, means that our Periodic Review 2023 decisions will apply to GBR, and means that any ongoing prosecutions under health and safety law are unaffected.

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.

Answer: While the definition of the public interest duty is a matter of government policy, it is important that it is clearly defined and that there is a shared understanding of what the different terms mean, to enable GBR to deliver and to be held to account effectively.

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.

Answer: We do not have strong views in relation to this proposal as it is a matter of government policy and does not impact directly on ORR's roles or our ability to carry out our regulatory functions.

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.

Answer: It is a matter for government to decide whether GBR should be able to appoint the private or public sector to operate passenger services. However, should this proposal advance, it will be very important that government or GBR publishes a clear policy around direct award to support transparency in relation to the decision-making for the appointment

of public sector operators. This will allow private operators to know whether or not there is a market and may also help to avoid unfair discrimination.

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.

Answer: We do not have strong views in relation to this proposal as it does not impact directly on ORR's roles or our ability to carry out our regulatory functions.

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

Answer: GBR's new access policy will be crucial in determining the principles for who has access to the railway, and it is appropriate that this is publicly consulted on and independently upheld. The proposed new duty for ORR to 'facilitate the furtherance' of GBR's access policies will give ORR a clear and specific legal basis to take account of such an overarching railway access strategy in our decision-making without compromising our independence. ORR decisions will continue to be independent judgements based on all our statutory duties.

Currently the policies, processes and criteria for making decisions about the use of the rail network are often not aligned across funders, Network Rail and ORR. Bringing decisions about passenger train service specification and allocation of network capacity together into GBR (under ORR's independent oversight) creates opportunities to improve the transparency, pace, quality and coherence of decision-making. The new duty can support this. However, it will not mean that ORR's decisions always have to adhere to GBR's strategy and will not compromise ORR's independence in ensuring GBR has followed the policies and directing corrective action where it has not.

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.

Answer: Any modifications to The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 to allow GBR to operate effectively as an integrated rail body must also ensure that appropriate protections remain for third parties. Modifications will also need to be consistent with ORR's roles and obligations under the 1993 Railways Act. Some of the provisions that may need to be reviewed include:

- Reg 9: which requires separation of accounts between infrastructure managers and operators.

- Reg 10: which requires independence of (train) service providers from dominant bodies and firms.
- Reg 14 (9): which requires establishing, determining, and collecting access charges to be done independently from any railway undertakings.
- Reg 15: which requires infrastructure managers' income must balance with its expenditure on infrastructure.
- Reg 16: which requires the infrastructure manager must establish a performance scheme as part of the charging system. On Network Rail's infrastructure, Schedule 8 currently fulfils this legal requirement. While we are not advocating for government to legislate, in our view this regulation effectively restricts the reform ambition to remove the requirement for a Schedule 8-style performance scheme between GBR and its operators. As we have set out in our April 2022 consultation on Schedules 4 and 8, if current legislation is amended, it may be possible to adopt alternative arrangements, but we emphasise that any changes to track access contracts (in which Schedule 8 sits) would need to be made in a timely way to be in place for the next control period (CP7).
- Reg 19 (4): which requires capacity allocation to be carried out by a body that is independent from any railway undertakings.

In addition to changes to legislation, ORR stands ready to support DfT and GBR to identify changes to industry processes to improve the relationship between long term planning, train service specifications, capacity allocation and timetabling. Strong engagement across industry will be vital to this process, ensuring careful assessment of proposals and impacts, including securing appropriate protections for third parties.

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.

Answer: We cannot confidently anticipate the impact of the proposed recasting of ORR's duty to promote competition until we come to apply it to a decision.

The impact will depend on the duty's exact wording and is likely to change over time, as the circumstances and priorities of funders evolve. Furthermore, ORR already has duties requiring it to take into account funders' guidance and the impact on the funds available to Secretary of State in our decision-making, thus the proposed addition to the competition duty is likely to make the existing framework more complex.

Ultimately, ORR decisions will continue to be independent judgements based on all our statutory duties. We also note that our Competition Act functions will not be affected by this change and will continue to apply.

We understand stakeholders are likely to be concerned that the revised duty could make it less likely that ORR will approve or direct additional passenger open access services. We also want to work closely with DfT and stakeholders to consider whether there are any potential unintended consequences, particularly for freight operators, and we will support DfT to inform the development of any Secretary of State guidance to ORR, which we must already have regard to when exercising our functions.

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)

Answer: The extent of competition law, and any exemptions, is a matter for government. However, if this proposal is introduced, we consider there will need to be certain safeguards in how it is implemented in law so as to ensure the minimum possible disruption to competition within rail markets.

Specifically, it is important that this power of direction is scoped narrowly and goes no further than necessary to achieve the legitimate policy aim. The wording defining this power in legislation, as well as the future wording of each direction, will be critical in determining what impacts these directions will have.

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?

Answer: As competition regulator for the sector, it is not appropriate for ORR to assess these risks in the abstract given the chance of prejudicing future competition decisions.

Questions 11 and 12:

Are there any particular additional safeguards (in addition to the safeguards outlined in paragraph 2.54 - 2.55 above) 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?

and

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.

Answer: While it will be for DfT to consider how best to incentivise the envisaged strong role for the private sector in the railway, appropriate safeguards will be needed to ensure there is a level playing field in the sector and that GBR exercises its powers in a way that encourages private participation, entry and innovation. Examples of where risks could potentially arise include:

- Sharing commercially sensitive information with GBR: Freight operating companies sharing commercially sensitive information with the infrastructure manager (as they do with Network Rail today) where that infrastructure manager has an interest in making use of the same network capacity for its own passenger operations, as will be the case for GBR.

- Collaboration and information sharing between GBR's passenger operators: These passenger operators collaborate and share information on service patterns or pricing, and this information places them at a relative advantage to other operators (passengers and/or freight).
- GBR's retail arm's access to and use of privileged information: GBR's retail arm uses the additional information it has access to in a way that discourages competition from third party providers.

Several measures can be considered to avoid potential detriment to third parties that might arise from train operating companies' collaboration, as well as measures to ensure fair competition between GBR and other market players.

The following safeguards (which could for example be implemented through licence conditions) should be appraised:

- Maximising transparency: DfT could consider requiring a fully open data approach where possible:
 - Making certain types of information held by GBR, such as capacity, freely available to all (i.e., Framework Capacity Statement, Network Statement etc.) to support efficient and effective use of capacity.
 - Ensuring that information provided by train operating companies' collaborating is made available to third party competitors at the earliest opportunity.
- Physical and legal separation and clear ring-fencing provisions within GBR: Promoting appropriate physical and legal separation and clear ring-fencing of commercially sensitive information between the GBR group and GBR's retail arm.
- Preventing cross-subsidy: Ensuring there is no cross-subsidy of retailing activity. The transfer of assets and resource (such as advertising) between GBR entities should be priced at the market rate (and equivalent charges levied on GBR).
- General access to ticketing products and infrastructure: Ensuring that third party retailers have access to all ticketing products (including discounted fares) on commercially viable terms and have free access on non-discriminatory terms to GBR's infrastructure and services including real-time data.

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.

Answer: For rail reform to achieve its expected benefits, the future governance framework must ensure that roles, responsibilities, and decision-making are clear, empowering GBR to act as a guiding mind to maximise benefits of integrated management of track and train. ORR broadly supports the proposals advanced by DfT in this area, but with the addition of safeguards around any Secretary of State power of direction.

- Clear roles and responsibilities: Important policy choices are now needed to clearly establish which specific decisions GBR will be making, and which have been

reserved by DfT, reserved to devolved authorities, or devolved through contracts to operators.

- GBR licence: We support the concept of a GBR licence that will set out GBR's duties and functions and reflect that it will have integrated responsibilities across track and train. The proposed requirement for GBR to develop and deliver integrated five-year business plans provides a clear basis for ORR to hold it to account. We agree the new licence, to be granted by the Secretary of State, should be consulted upon publicly.
- ORR powers in licensing regime: We support the proposals for ORR to retain our powers in the licensing regime in relation to GBR. Specifically:
 - We consider it is appropriate that the Secretary of State, as funder and sponsor of GBR, will issue its licence and have ultimate responsibility for sanctioning GBR for any licence breaches identified by ORR.
 - It is right that ORR retains full powers to enforce the licence (see response to question 15 below).
 - We agree ORR should retain its ability to modify the licence with consent of the licence holder, as is the case today for the Network Rail licence. We recognise that the removal of the Competition and Markets Authority referral route (in case ORR cannot secure licence holder consent to changes) is consistent with the Secretary of State role in setting the licence.
 - We welcome the confirmation that ORR's role as licensing authority in relation to operators of trains, stations, light maintenance depots and other networks will not change, including in relation to GBR-contracted operators.
- Secretary of State power of direction: The consultation explains this new power is not intended to be used in operational matters or to supersede or modify GBR's obligations under its licence, or the conditions of its funding. However, there will need to be clear mechanisms, preferably set out in statute, to reassure stakeholders of these intentions and that such a power will be used transparently:
 - A long-standing principle in railway safety is that operational decisions are taken by duty holders, who hold legal responsibility for safety; directions should not be able to cut across GBR's safety obligations.
 - If such a power is used extensively, it could undermine GBR's accountability framework by constantly changing objectives. It is important that directions do not harm stability and confidence in areas where commitments and plans need to be enduring – like the infrastructure settlement and licence obligations.
 - We agree that where directions have a material impact on issues within ORR's remit (e.g., GBR's ability to deliver its objectives or meet its licence obligations), ORR should be required to issue a public factual assessment to highlight the potential consequences.
- Retaining ORR-led periodic review process and independently assured change management process: We welcome the proposal to retain the periodic review

process through which ORR can support effective infrastructure planning and efficient delivery through a five-year process, protecting the stability of infrastructure funding and ensuring focus on safety, performance, asset sustainability and efficiency in the railway. Linked to this, we welcome the proposal for a managing change process set out in GBR's licence to support 'in-life' modifications to infrastructure funding and business plans with a continued role for ORR as an independent assurer. We provide additional views on the proposals for GBR's funding and business plans in our response to question 16 below.

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.

Answer: As issuer of the licence, it is a matter for Secretary of State to determine what duties are included. ORR welcomes the proposal for all GBR's duties to be captured in its licence.

It is important that GBR's duties are clearly defined and that there is a shared understanding of what they mean to enable GBR to deliver and to be held to account effectively.

Furthermore, to ensure alignment between what GBR is required to do and what ORR focuses oversight on, the licence will need specifically to require GBR to adhere to its duties in a way that ORR is able to take into account and, if necessary, enforce. It will also be important to ensure consistency across different parts of the framework – e.g., in relation to accessibility it would be helpful if the different accessibility regimes (Persons with Reduced Mobility legislation, Stations Code, Accessible Travel Policies) are gathered under a single duty.

Question 15: Do you support the proposal to amend ORR's powers to exclude the ability to impose a penalty on Great British Railways? (see para 3.26) Please explain.

Answer: We consider that the consultation proposals as a whole contain sufficient powers for ORR to hold GBR to account effectively. While the ability to impose fines on licence holders is an important element of our regulatory toolkit and can provide a strong incentive for good behaviour and to prevent breaches, we recognise that GBR will be a publicly owned and funded body, ultimately controlled by DfT as part of a wider governance framework. We therefore understand the proposed removal of this power specifically in relation to GBR. However, it is important that ORR will retain all other powers to impose financial penalties.

ORR will continue to hold a strong suite of powers in the licensing regime according to the Railways Act 1993 and the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016. These provisions will continue to provide a strong reputational and managerial incentive for GBR to address any concerns before a breach is declared and enforcement action is taken.

- ORR can issue enforcement orders and compel GBR to take action: ORR will be able to require GBR to address (likely) licence breaches (e.g., determining the

development of improvement plans or the establishment of a recovery board) and set timescales around this through the use of an enforcement order. Under the existing legislative framework, ORR has discretion in how prescriptive it chooses to be when issuing such an order, and that flexibility will be retained.

- Provisional orders: ORR will be able to issue a provisional order if there is an urgent need for GBR to take action.
- ORR's financial sanctions on access-related matters: ORR will be able to fine GBR under the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 for failure to comply with a direction or decision as set out in regulation 38 of those regulations ("If the Office of Rail and Road is satisfied that a relevant operator has contravened, or is contravening, a relevant [access] decision, direction or notice, it may impose on the relevant operator a penalty of such amount as is reasonable"), or the Access regime in Sections 17-22 of the Railways Act 1993.
- No changes in enforcement regime for other licence holders: ORR will retain the ability to fine other licence holders (including GBR's contracted train operators) for licence breaches.

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

Answer: We welcome the recognition that independent regulation is a core support to effective business planning and financing processes.

- Business plans: We welcome the proposal for a requirement set out in both legislation and licence for GBR to produce five-year integrated business plans (across both infrastructure and passenger services). Regardless of the form they will take, it is essential that ORR can regulate against plans across the business. We would expect GBR to also update and maintain integrated plans on an annual basis.
- Periodic review: We welcome the proposal to retain the periodic review process, led by ORR. The periodic review supports stable infrastructure funding and helps effective planning and efficient delivery over a five-year cycle. This is essential if GBR is to deliver efficiently and effectively. ORR will continue to lead the process to ensure an enduring focus on safety, performance, asset sustainability and efficiency in the railway.
 - To support effective delivery, when GBR is created it will need to take on full responsibility with clear accountability for commitments from Periodic Review 23 (which will determine the funding for and requirements from the mainline rail infrastructure for 2024-2029). We would then expect GBR to progressively develop an integrated track and train business plan incorporating all the commitments. To this end, we look forward to supporting DfT with independent advice on the development of its plans for the GBR business planning processes, which will be essential to secure benefits of integrated management of track and train.

- We also recommend that legislation could be clarified to be explicit that ORR has discretion to set different deadlines to DfT and Scottish Ministers to specify their High-Level Output Specification (HLOS) and Statement of Funds Available (SoFA) for a control period. For example, such flexibility can allow Scottish Ministers to take into account the wider DfT funding settlement for the railway in setting their expectations.
- Managing change process: We welcome the proposal to develop a ‘managing change’ process set out in GBR’s licence to provide independent assurance over any changes to five-year infrastructure funding and GBR business plans. This will provide GBR with the necessary flexibility to promote ‘in-life’ changes to business plans, based on informed and transparent decision-making. ORR will be able to provide independent assurance and advice, including additional assurance if the Secretary of State is able to issue directions that could impact on railway funding or outputs. To further support accountability, we consider there needs to be only one managing change policy that is applicable to all changes to business plans, regardless of what triggers them (changes resulting of both directions and guidance, changes in circumstances around business as usual etc.). We consider the managing change policy needs to be consulted on and externally approved (i.e., approved presumably by the Secretary of State, but if not then by ORR). The managing change policy will also need to retain a tripartite process where there can be a role for funders to explicitly resolve tensions (by changing the outputs they require or the funding they make available).

Some key policy decisions in this area remain to be worked through and will continue to collaborate with DfT and GBR Transition Team providing independent advice to develop their proposals.

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.

Answer: We welcome the proposed approach to independent scrutiny and challenge, and ORR’s roles within it. Strong and independent regulation and oversight, supported by ORR, should occupy a central position as enablers of reform objectives.

In particular, we strongly support:

- ORR’s independent monitoring and enforcing of licences: The continued role for ORR in independently monitoring and enforcing licences, as well as monitoring and scrutinising GBR’s delivery of its objectives across the business against its licence and business plans. This means that funders and third parties can have confidence that provisions in the licence will be enforced, and objectives are being met.
- ORR’s continued roles in the access framework: ORR will continue to add value through our proactive engagement with GBR and other stakeholders by providing guidance, constructive challenge and feedback to GBR, operators and funders. This will help improve outcomes and timeliness of decision-making and delivery, while ensuring fair and transparent access to the network, protecting the interests of freight and non-GBR operators. This is all the more important given the competitive

pressures for use of the network that will exist between GBR's operators and those delivering for other public or commercial actors. We consider the proposals set out in the consultation can support these principles and we will engage in the development of the detail.

- ORR's continued role in supporting transparency across the sector, with broad information gathering and investigatory powers, and through its official role in the publication of rail statistics.
- ORR's role holding GBR to account for commitments on accessibility, particularly in relation to National Accessible Travel Policy and ensuring it builds upon the commitments train and station operators have already made.

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.

Answer: We strongly support this proposal as a way to maintain and strengthen ORR's independence. The statutory power to levy a fee will ensure ORR has stable, predictable funding, which is key for ORR to plan and carry out its activities effectively and efficiently with independence.

Currently, ORR's funding (for non-safety railway regulation) is set through a condition in Network Rail's licence. Ultimately DfT will control the conditions in GBR's licence, which means that if ORR's funding continued to be via the licence, it would be dependent on DfT continuing to include a licence condition requiring payment of fees to ORR.

The proposed levy mechanism in the consultation would instead provide the clearest statement of ORR's independence from DfT, supporting both the perception and reality of ORR's independence. ORR would continue to be externally accountable and subject to scrutiny for its use of and need for funding, and the levy is consistent with Cabinet Office guidance.

Finally, this option is also aligned to how ORR's safety role is funded today, providing a robust precedent for the model, and ensuring greater consistency and harmonisation in how ORR operates.

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.

Answer: We recognise and support the importance of passengers' representation in the future rail model, ensuring their views are effectively considered.

It will be key that there is clarity around roles, responsibilities, and decision-making among GBR, Transport Focus, and ORR in relation to this area. Developing publicly available memoranda of understanding between GBR and Transport Focus, and between ORR and Transport Focus, as suggested by the consultation, will support clear accountabilities. We look forward to taking an active role in their preparation.

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.

Answer: We welcome the importance attached to the issue of accessibility in the proposals presented in the consultation and the recognition that ORR will continue to have an important role to play in enabling GBR's ambitions in this area. GBR will also have an important role in delivering improvements in passenger experience, for which we expect to hold them to account, and we welcome the specific proposals for its role in improving accessibility.

We welcome DfT's engagement with us so far to further develop proposals in this area and will continue to support this work, including:

- Proactive engagement in the steering group for developing a National Rail Accessibility Strategy and in the development of the regulatory framework for the National Accessible Travel Policy.
- Independent advice for the implementation of the proposal for a duty on accessibility: Setting out this duty in GBR's licence can help bring disparate accountabilities for accessibility across the industry into one place. Clear licence conditions with robust safeguards will be needed to ensure appropriate accountability and to secure the duty promotes the appropriate level of challenge and ambition. It is also important that licence obligations ensure compliance and delivery at the level of GBR's regions, avoiding risks that accessibility commitments are not fully embedded in the activities of each region.

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.

Answer: We do not have strong views in relation to this proposal. It does not impact directly on ORR's roles or our ability to carry out our regulatory functions.

We note that the Disabled Persons Transport Advisory Committee is a valuable stakeholder that always provides constructive and welcome feedback, especially in relation to our work on Accessible Travel Policies.

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.

Answer: We support broader access to information where it helps enable a fairer and more competitive market and supports improvement across the sector.

- As highlighted in our response to question 11, DfT may consider ways to maximise transparency in relation to train operating companies' collaboration.

- The consultation indicates that future contracts for train operating companies will be amended to require them to acknowledge and cooperate with GBR's open data policy. As plans develop, it will be important to clarify if the proposal on permitted information disclosures would only apply to GBR's functions over the Passenger Service Contracts (i.e., its franchising role), or if it also extends to open access operators and freight operating companies.
- Finally, we also note that better access to information can support the sector's environmental goals. Better environmental, and especially carbon, data is important to understand industry progress against government objectives. There needs to be publicly available, whole industry, quality assured environmental data. Current environmental reporting by operators is not open by default or collected consistently to allow comparison and aggregation. This limits transparency and public scrutiny over progress on targets. Such information should be open by default, giving users better information on the environmental impacts of services.

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.

Answer: We do not have strong views in relation to this proposal. It does not impact directly on ORR's roles or our ability to carry out our regulatory functions.

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

Answer: There are areas in the impact assessments where clarification would be helpful:

- Careful consideration of impacts of non-legislative change: The impact assessment refers to benefits that can be delivered through a do minimum approach (use of GBR as guiding mind) and through legislative change. While legislation will be important in expanding the role of GBR, significant further work will still be required to amend industry processes to deliver the full benefits envisioned by the reform proposals. Strong engagement across industry will be vital to ensure careful assessment of proposals and impacts for non-legislative changes, allowing detailed impact assessment.
- Values of 'streamlining industry processes' and 'avoiding duplication': The benefits of reform are mainly derived from 'streamlining industry processes' and 'avoiding duplication', both over 5 years. To ensure that we can focus our activity on supporting the achievement of envisaged benefits, we would welcome further clarity on how these values have been reached and what processes are being streamlined.
- Passenger Champion: Further detail in relation to the evidence which has been used to establish non-monetised benefits in relation to the assessment of the preferred Passenger Champion option could support transparency in relation to this choice.

There are also additional areas to assess that DfT may consider:

- Embodied carbon and destructions of habitats and environment: We note that the impact assessment of carbon emissions does not consider embodied carbon (the carbon dioxide (CO₂) or greenhouse gas (GHG) emissions associated with the manufacture and use of a product or service). This could be included, given the scale of rail embodied emissions. There is also no consideration given towards the destructions of habitat and environment in the development of railway infrastructure.
- Additional impact assessments: We expect that changes to the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 will be subject to impact assessment. We propose that impact assessments should also be carried out for changes to ORR's duties, GBR's contracting approach, GBR's retail role, and the costs and benefits involved in data sharing proposals could all be subject to impact assessment.
- Benefits of integrated oversight: Clear accountabilities will empower GBR to maximise the benefits of integrated decision-making across track and train. ORR will start to provide independent expert oversight of GBR on a whole industry basis, and, for this, it will need some additional resources to ensure we have the appropriate expertise and capabilities.

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

Answer: We do not have any additional evidence to provide at this moment.