The Williams-Shapps Plan for Rail: A Consultation on Legislation to Implement Rail Transformation

4 August 2022

Summary of Logistics UK View

- Logistics UK welcomes the creation of Great British Railways (GBR) and the opportunities this creates. However, GBR will have significant market power. The Office or Rail and Road (ORR) will have an important role holding GBR to account and protecting freight interests.
- Logistics UK's key recommendations are:

Incentivise rail freight growth:

  - Freight and passenger services should be given equal treatment. GBR should have a core duty to facilitate the delivery of high-quality, reliable freight services and be accountable to freight operators for the level of service they provide.
  - GBR should work collaboratively and transparently with the freight and logistics sector. GBR governance should include a freight lead director on the national, regional and system operator Boards.

Protect rail freight interests:

  - The core duties in the licence should include a requirement to provide a level playing field for both private and public sector interests – this should be reflected in the approach to data sharing and access, for example.
  - GBR will have significant market power. Any new ORR duty should seek to secure the regulator's independence and simplify their current duties as far as possible. A new overarching ORR duty to further the interests of public and private funders and users of rail services, may be one way of achieving this.
  - Given the significance of proposed changes to rail freight performance, growth and investment, rail freight stakeholders should be statutory consultees for all proposals which have the potential to affect their interests, including business planning and access reforms. Rail freight protections such as schedule 4 and 8 compensation regimes should not be removed without appropriate replacement to protect rail freight commercial interests.

Deliver the benefits of rail freight:

  - GBR and ORR access plans should take account of the proposed rail freight growth target, government legally binding zero carbon commitments and DfT proposals for a National Freight Network and Energy Forum.
  - The 30 year plan should include delivery plans for both the proposed freight growth target and legally binding zero carbon commitments. In advance of introducing new legislation, government should ensure that the High Level Output Statement includes a freight growth target for Control Period 7 (2024-29).
  - The impact assessment should be updated to reflect rail freight opportunities and risks.

About Logistics UK

Logistics UK is one of Britain's largest business groups and the only one providing a voice for the entirety of the UK's logistics sector. Our role, on behalf of over 19,000 members, is to enhance the safety, efficiency and sustainability of freight movement throughout the supply chain, across all transport modes. Logistics UK members operate over 200,000 goods vehicles - almost half the UK fleet - and some one million liveried vans.

In addition, they consign over 90 per cent of the freight moved by rail and over 70 per cent of sea and air freight.

Logistics UK welcomes the opportunity presented by the creation of Great British Railways (GBR) to promote and grow rail freight as part of an efficient, productive and sustainable logistics network.

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.

Yes, we agree with the proposed core functions listed but think additional functions are needed.

Q: What other functions do you think are needed?

The consultation document says that GBR will put passengers and freight customers first. Paragraph 2.7 sets out GBR's core functions, yet freight is not mentioned here; the core functions remain passenger-operator focussed

Recommendations:

- GBR should have a core duty to facilitate the delivery of high-quality, reliable freight services and be accountable to freight operators for the level of service they provide. The freight and passenger services should be given equal treatment.
- GBR should work collaboratively and transparently with the freight and logistics sector. Governance should include a freight lead director on the national, regional and system operator Boards.
- The core duties in the licence should include a requirement to provide a level playing field for both private and public sector interests – including with regard to freight access and data sharing.

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.

A guiding mind for the railways must ensure that it fully recognises the value of rail freight. There is significant potential for innovation, environmental and economic benefits as well as positive impacts for the wider logistics network if GBR delivers on its promise to put freight first.

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.

No, we do not support this new duty. We understand that this new duty is intended to support decision making regarding open access operations for passengers and freight services and value to taxpayers. (The consultation references "public sector funders".) The logistics sector is a significant source of private funding including with regard to rail freight infrastructure and rolling stock.

We note that this is the only change currently proposed to ORR duties and that proposals do not include simplification of current ORR statutory duties, which are wider ranging and complex. Whilst this has allowed ORR to adapt to priorities over time, there is no clear overarching duty to rail customers[1]. This new proposed statutory duty for ORR would add to this complexity and risks undermining ORR's independence as it makes ORR subservient to GBR policy. We note that, in contrast, the Civil Aviation Authority has a single clear overarching duty:

[1] Our rail and road duties (orr.gov.uk)

"The CAA must carry out its functions …in a manner which it considers will further the interests of users of air transport services regarding the range, availability, continuity, cost and quality of airport operation services.[2]"

Assuming GBR has a core duty to support freight as proposed above, and that GBR policies reflect this duty, this approach could perhaps be made to work. However, our preference would be for a more direct duty on ORR to further the interests of all funders and users of rail transport services – including freight customers. GBR will have considerable market power – and vertical integration creates a risk that it will favour passenger services over freight. It will be imperative that ORR holds GBR to account, protects freight interests and ensures the voice of the freight sector continues to be heard.

The Rail Delivery Group *Future of Freight* report found that rail freight adds £2.45bn a year to the UK economy – with a single train path having a value of up to £1.5 million. All future changes to the access, timetable and delay compensation regimes (schedule 4 and 8) must be consulted on. Freight customers and operators are private businesses – they run on low margins and bring significant private investment to the railway.

Delivery of the freight growth target will require additional investment in and access to the railway. We welcome the commitment in the Integrated Rail Plan (IRP) to electrification and gauge clearance enabling freight access for intermodal as part of the Trans Pennine Upgrade, however freight access to East West Rail remains uncertain and too often rail freight upgrades such as those proposed for Ely junction, access needs from Felixstowe and electrification infill projects are delayed.

HS2 Phase 1 is expected to open between 2029 – 33, and to deliver benefits for rail freight. We understand that future (IRP) timetable options are currently under development. Rail freight is part of a wider freight and logistics network, for example intermodal traffic starts at the port and the last mile is likely to be road freight. For rail freight to be efficient and cost-effective, warehousing, depot and access requirements all need to be taken into account. Zero carbon ambitions also mean that consideration needs to be taken with regard to freight traction power including electrification, hydrogen and battery. There are opportunities for better multimodal integration to support the efficiency and productivity of the logistics sector.

Logistics UK welcomes the Department for Transport (DfT) *Future of Freight*[3] report commitment to a National Freight Network and Freight Energy Forum. Both GBR and ORR should be included in the development of the national network. We also welcome the Transport Select Committee recommendation that there should be a rail freight strategy, including a detailed assessment of how the IRP will achieve greater capacity for and use of rail freight[4].

Recommendations:

- GBR and ORR access plans should take account of the proposed rail freight growth target, legally binding zero carbon commitments and DfT proposals for a National Freight Network and a Freight Energy Forum, in order to maximise the benefits of rail freight to end to end freight journeys.
- Given the significance of access rules to rail freight performance, growth and investment, rail freight stakeholders should be statutory consultees for all proposals which have the potential to affect their interests, including access reforms. Rail freight protections such as schedule 4 and 8 compensation regimes should not be removed without appropriate replacement to protect rail freight commercial interests.

[2] Civil Aviation Act 2012 (legislation.gov.uk)
[3] Future of freight plan - GOV.UK (www.gov.uk)
[4] The Integrated Rail Plan for the North and Midlands (parliament.uk)

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.

It is important that access rights support the ambitions for a freight growth target and legally binding zero carbon commitments. The Strategic Freight Unit, which is a welcome addition within GBR, should maintain a focus on access rights and their impact on multi modal end to end freight journeys and the critical role that access certainty has in supporting private investment in rail freight.

Strong vertical integration can be a benefit to passenger trains but there is a risk that the passenger timetable is prioritised over freight access and therefore appropriate safeguards must be introduced. Prioritising passenger over freight goes against the government's promise to put passengers and freight first. The rail freight growth target should include clear delivery plans. Logistics UK proposes to cover this further in our response to the Call for Evidence on the Freight Growth Target.

In advance of introducing new legislation, government should ensure that the High Level Output Statement due for publication this autumn includes a freight growth target for CP 7 (2024-29).

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

Rail freight needs to be able to compete effectively with road freight in terms of availability of access, price and timely delivery. Unlocking the full value of rail freight including zero carbon, environmental and congestion benefits will require focus on both medium and long-term infrastructure needs and more immediate consideration of the commercial realities of freight brokerage including pricing, timely delivery and compensation for delay. Freight compensation regimes such as schedule 4 and 8 should not be removed without an appropriate new mechanism to ensure rail freight commercial interests are appropriately protected. The freight growth target must be supported by a clear delivery plan including protections from poor service and excessive costs.

Recommendation:

- Given GBR market power, any new ORR duty should seek to secure the regulators independence and simplify current duties as far as possible. A new overarching ORR duty to further the interests of public and private funders and users of rail services, may be one way of achieving this.

11. 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?

GBR will have considerable market power. There needs to be a guarantee the public sector won't stifle innovation and investment in the freight sector – hence the proposal above that GBR responsibilities to freight should be included in GBR core duties and include the requirement for a level playing field between public and private sector interests.

GBR must protect sensitive and commercially confidential data that the FOCs share as part of the contractual relationship. There must be safeguards in place to protect this information.

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.

Yes, we agree with the new duties being captured in the licence. A strong governance framework is very important to freight and will provided some of the checks and balances required when it comes to greater collaboration between track and train. It is vital that freight's needs are appropriately represented at national system operator and regional levels.

A clearer framework for the relationship between GBR and government will be useful. Logistics UK welcomes the commitment to continue five-year control periods, develop a 30 year plan and consult on licence conditions and any subsequent changes to the licence.

However, we are concerned that the proposal to create a new change control process for GBR may undermine the certainty created by these requirements. The private sector requires long term certainty to support investment in assets, innovation and skills and it will be important that these flexibilities do not undermine private interests. Most of these changes will be non-legislative and Logistics UK would want to ensure freight industry interests are fully reflected hence the proposed core duty, governance and statutory consultee status for freight stakeholders proposed above.

Recommendation:

- The 30 year plan should include delivery plans for both the proposed freight growth target and legally binding zero carbon commitments. In advance of introducing new legislation, government should ensure that the High Level Output Statement includes a freight growth target for Control Period 7 (2024-29).

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.

No we do not support this. It is important that ORR retains the power to levy financial penalties if required.

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

Any business planning arrangements must be transparent, and freight must continue to be consulted. Prioritisation of freight investment needs requires effective consultation – one model would be to replicate NATS licence requirements for consultation with airlines. There is an opportunity to strengthen consultation requirements by requiring statutory consultation of freight stakeholders.

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.

The ORR is a strong independent regulator and is well-positioned to have scrutiny over the industry. As noted above it needs to remain independent from government and GBR.

The current levy sits with Network Rail. Logistics UK would want to ensure all existing safeguards, including for undue influence, remain if the levy fee is transferred to GBR. GBR must ensure that freight is incentivised, and costs are managed.

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.

It is not clear how this might apply to freight and logistics data. Logistics UK welcomes open data initiatives to harness efficiency and innovation including potential benefits to freight customers. However, some data will be owned by private companies.

GBR needs to be committed to creating a level playing field to allow the private sector to compete and innovate. This is particularly important for to access to data. Therefore, GBR should have a duty to maintain a level playing field with the private sector, should also be considered with regards to data as it has the potential to create significant benefits.

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

We support this proposal which has the potential to reduce rail freight rolling stock leasing costs.

25. Do you have evidence relating to the impacts and risks identified and discussed in the impact assessments? Please provide it to us.

Current proposals are very passenger focussed and the impact assessment currently fails to recognise the potential impact this approach would have for rail freight. As noted above there should be a core duty for freight customers otherwise there is a risk that GBR will favour passenger traffic, and this would undermine potential freight benefits.

The impact assessment (page 61) covers the environmental impact of rail freight – however it fails to mention both the environmental impacts of passenger rail and the significant environmental benefits of rail in comparison to road. Government zero carbon commitments including the Transport Decarbonisation Plan recognise the importance of mode shift to rail. GBR should be held accountable for the delivery of these plans and this should be fully reflected in this impact assessment.

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