Briefing: What the Railways Bill means for the role of ORR

Access and use of the network

The scale of non-GBR train operations and infrastructure

35. GBR will be formed out of Network Rail and will encompass the 14 train operating companies currently contracted by DfT. GBR will operate the vast majority of rail infrastructure, as well as most passenger services.

36. Nevertheless, based on the current distribution of services, non-GBR operators are expected to remain significant users of the network, underlining the continued importance of ensuring fair access to the network. In some parts of the network, most notably in Scotland and Wales, GBR operated services will be in the minority. Around 40 entities who currently have rights to use Network Rail's network are expected to sit outside of GBR in the future model. These include devolved passenger operators, freight and open access passenger operators, and currently account for roughly:

- A quarter of train kilometres – primarily provided by the devolved operators in Scotland, Wales, London and Merseyside (2024-25 data);
- A third of passenger journeys – with nearly three quarters of these attributable to the Elizabeth Line and London Overground (2024-25 data);
- A fifth of the track access charges currently paid to Network Rail – primarily paid by devolved operators, with freight operators paying 2% of access charges, and open access

passenger operators paying 1% (2023-24 data); and

- 800 out of the approximately 2600 stations – the majority of which are operated by the devolved operators owned by the Scottish and Welsh Governments.

37. The Bill allows Scottish Ministers and Welsh Ministers to arrange for GBR to operate devolved train operating companies on their behalf – directly, via a subsidiary or via a jointly-owned company. This means that the scale and nature of non-GBR services will depend on whether the devolved governments make such arrangements.

Access, charging and appeals

38. The Bill makes significant changes to the legal framework for access to GBR infrastructure . Under the Bill:

- ORR will no longer approve or direct access contracts for GBR, as ORR currently does for Network Rail. Instead, GBR as the directing mind for rail will determine access to its own network (clauses 69 and 70);
- ORR will also no longer determine charges or the terms of train performance incentive schemes for use of GBR's network: these will be set by GBR (clauses 64 and 65); and
- The Railways (Access, Management, and Licensing of Railway Undertakings) Regulations 2016 (AMRs) will no longer apply to GBR's infrastructure, although these regulations will continue to apply to GBR's provision of service facilities including stations and light-maintenance depots.
- ORR will continue to regulate other UK infrastructure and facility managers under the AMRs and Railways Act 1993 as relevant – meaning that the new access framework will apply to GBR infrastructure but not to other infrastructure managers (clause 70).

39. Under the Bill, GBR will be required to produce an Access and Use Policy (AUP) setting out how it will make decisions regarding applications to use its network. Network Rail has begun developing GBR's future AUP, and ORR must be consulted when GBR issues or revises the AUP (clauses 59 and 66). GBR will also be required to produce an infrastructure capacity plan, a working timetable, a charges scheme, and a performance scheme designed to encourage GBR and operators to minimise disruption on the network (clauses 60, 61, 62, 64 and 65).

40. Under the Bill, provisions contained within these documents and schemes will be subject to a new ORR appeals process, as will GBR's decisions relating to access to infrastructure, charging or

performance schemes (clauses 59(6), 60(6), 61(6), 62(7), 64(8), 65(7), and clause 67). ORR must determine appeals on the same basis as a judicial review in England and Wales, or as an application to the supervisory jurisdiction of the Court of Session in Scotland (clause 68). This means that ORR must decide the appeal on the basis of whether or not the GBR decision, policy or scheme has breached public law principles – e.g. whether GBR has acted illegally, irrationally, not followed due process or not honoured legitimate expectations.

41. If ORR upholds an appeal, it will have powers to quash GBR decisions, to order GBR to reconsider and to give GBR directions about how it should reconsider (for example by directing it to take a particular impact or statutory duty into account when it reconsiders its decision). Alternatively, ORR may substitute its own decision for GBR's – but only if GBR has made an error of law and without that error there is only one decision that GBR could have reached (clause 68). Annex A summarises this process.

42. The appeals mechanism in the Bill is therefore narrower than ORR's current directing role under the Railways Act 1993 and ORR's current appeals role under regulation 32 of the AMRs, under which – in the event of disagreement – ORR has broad scope to make decisions and issue directions, so as to determine access and its terms, based on its judgement and weighing its statutory duties.

43. Under the Bill, the Secretary of State will have powers to make regulations about the steps which need to be taken before an appeal is made, to set fees and time limits for appeals and to define how ORR is to carry out its appeals role. The Secretary of State must consult ORR on any such regulations (clause 68(6) and (7)). Subject to any regulations, ORR will be responsible for developing its own processes and decision criteria and will consult on this (see "next steps" below).

44. The UK Government intends ORR to report periodically on how the access regime is facilitating private investment in rail, consistent with GBR's duties and wider objectives set by Ministers. ORR may also use its broad monitoring powers to consider and report on how GBR manages the access and use of its network by third party operators.

45. Separate from the Bill, a new GBR Code will be created to replace the current Network Code, the industry rules which set out how Network Rail and those who run trains on its network must work together e.g. on timetabling. This will enable GBR to make decisions about the content of the new code, replacing today's system where changes require broad industry consensus and ORR approval. GBR will also need to put in place a new suite of access contracts with non-GBR operators using its network and facilities to comply with the new legislative framework - Network

Rail is engaging industry on this. ORR will similarly need to consider (and consult on) any necessary changes to contracts for use of non-GBR infrastructure and facilities as a result of the Bill.

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- → Next ORR's Transformation Programme and next steps