# **Williams-Shapps Plan for Rail:**

# **legislative changes to implement rail reform**

**Response from the Rail Wagon Association**

**Personal details**

### Your (used for contact purposes only):

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O**ur organisation is a rail organisation**

**Describe what your organisation does.**

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|  The Rail Wagon Association (RWA) represents the interests of owners, keepers, freight end users, designers, manufacturers, hirers, ECMs, consultants, maintainers and operators involved in rail freight wagons based in the UK. This includes the 5 principal freight operating companies and Network Rail. |

**Our location is UK wide.**

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**Our organisation has 31 member companies, we cover over 95% of the wagons operating in the UK, including the infrastructure fleet.**

We welcome the opportunity to comment on the Government consultation on the Williams Shapps Plan for Rail. We do not wish to keep our response confidential.

**Response from the Rail Wagon Association**

**General Comment on Chapter One**

Para 1.23: Freight Operating Companies

It should be noted that the freight sector comprises more than just the FOCs. The wagon fleet is owned by a combination of FOCs, leasing companies and Network Rail. In addition, there are several Entities in Charge of Maintenance responsible for ensuring that these wagons are maintained in a safe and fit to run condition, as well as independent maintenance companies.

All of these (with the exception of the Network Rail infrastructure fleet) are commercial companies, operating on slim margins, and essential to delivering the UK freight business.

**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.**

**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.**

Integrated Guiding Mind

In various places in the document there is reference to the ‘whole system’ and ‘bringing track and train together’ but this is not applicable to freight. Such references are misleading as commercial freight is not to be brought within GBR.

We note in para 1.28 that the RSSB is to continue as now but find this perplexing.  The RSSB is at present funded by its members and sets industry standards which participants are expected to follow, even an industry participant which chooses not to join RSSB.  We note also that RSSB is increasingly offering commercial (consultancy) services which could lead to questions over impartiality.  Consequently, we believe that the position of RSSB within the industry should be reviewed and that it should be funded by the taxpayer and not by those bodies which choose to join it.

At present, Network Rail is a member of RSSB in its capacity as infrastructure manager.  Going forward we question whether GBR as guiding mind, contracting entity for the majority of passenger services and owner of the infrastructure should be a member of RSSB.  If it were to join RSSB it could have overwhelming influence.  Accordingly, GBR should be in membership only in its role as infrastructure manager and with appropriate safeguards.

Core Functions

It is a concern that the core functions set out in para 2.7 do not reference freight, although in para 2.3, supporting the growth of freight is listed as something GBR will do.

Accordingly, we believe the core functions should include a duty to facilitate and manage efficient access to the rail infrastructure for freight services. This is essential if we are to encourage more investment in freight and achieve the UK freight growth aspirations.

We are also unsure what is meant by ‘…provide leadership across rail systems …’ in the first bullet point of para 2.8. Which systems?

Para 2.8 states GBR will be required to encourage private sector investment in the railway where it brings benefits for rail users and society. Most of the investment in freight is by the private sector investing in locomotives, wagons, terminals and the associated loading, discharge and storage facilities. Encouraging such investment requires GBR to provide some certainty of return – see also our answer to Q 6 (Securing Better Use of the Rail Network).

Public Interest

The duty set out in para 2.3, 2.9 and elsewhere, refers to managing the network in the public interest. The determination of what is in the public interest and its interpretation by GBR will have a large impact on the fortunes of freight.

Strangely, the social and environmental benefits of freight, such as the reduction in congestion and accidents do not seem to be explicitly included in the list of considerations in para 2.9. They are, perhaps, inferred in ‘the benefits from promoting the carriage and growth of freight’ but promotion and delivery are quite different.

The last consideration in paragraph 2.9 should include ‘and for freight end users.’

**Questions 3, 4, 5 – no comment**

**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.**

We see the development of the GBR policy on track access as key to determining the future of freight and the continuing private sector investment in freight facilities. To encourage investment, and in particular the investment needed to meet future freight growth targets, it is crucial that GBR provides certainty of return for the investor. This means providing certainty of track access costs and asset utilisation.

Certainty of asset utilisation can only be delivered by GBR ensuring that access to the network is available to freight. More specifically, delivering freight access means ensuring that trains have efficient and reliable paths on the network. The amount of freight that can be moved by a set of wagons is directly influenced by the journey time. Time spent idling in yards, loops and sidings whilst short and frequent (and often lightly loaded) passenger services take priority, is detrimental to freight efficiency. This has a negative impact on cost, wagon productivity and competitiveness with road.

New build wagon projects can be quite long (18 months plus) and so certainty about future charging regimes and the overall level of charge are also important factors.

We also believe that para 2.27 should acknowledge that the railways are also funded by freight end users and that the social value includes environmental benefits.

**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.**

We are not aware of a need for any immediate changes to the Access and Management regulations but do wish to comment on the proposal to make it easier to amend EU derived rules.

We believe that there are elements of the Interoperability and Safety regulations (eg TSIs) which are not appropriate to the UK market. Whereas there is value in alignment for UK component suppliers selling into the EU markets, there should be a more pragmatic approach on those provisions which are clearly not needed in the UK domestic rail market. The previous presumption of maintaining alignment between the EU TSIs and the UK NTSNs should be removed in favour of a more flexible approach.

**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.**

The recasting of ORRs competition duty to better reflect public sector funding must not lead to preference for tax-payer passenger services over privately funded freight services, nor for public sector GBR infrastructure trains over commercial freight.

If it is intended that this duty only applies to the passenger sector then this must be made clear. We are also unclear as to whether this duty would conflict with the duty to ensure fair competition.

**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)**

We consider that if GBR issues a direction to its Operators to share information (as per para 2.54) then ORR should be notified and required to investigate and establish whether the direction was reasonable.

**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 believe that there is good co-operation and collaboration in the freight sector particularly in regard to the sharing of safety and technical engineering issues. Indeed, such collaboration is a condition of duty holders.

Our experience is that despite the duty of cooperation already being enshrined in law, there are examples where commercial confidence and protecting intellectual property rights have hindered or prevented the transfer of appropriate information. There is a very clear risk that if there is no legislative requirement to co-operate, there will be even less ability to attempt to cooperate and against which behaviour there will effectively be no comeback.

**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?**

GBR should be obliged to act in a non-discriminatory manner.

**Question 12 -** No comment

**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.**

The structure of GBR described in para 3.3 is understandable but lacks the detail needed to comment further.

The relationship between the GBR centre and the five regional divisions will be crucial for inter-regional freight services and for the implementation of cross region initiatives. For example, the system of Wheel Load Impact Detectors and Hot Axle Box Detectors is an important component of freight safety, managed nationally by the centre but delivered on the ground by the present Routes. There is a risk that the regional divisions will see such systems as costly and a lower priority than their in house passenger businesses.

We believe that this would be addressed by the GBR freight organisation being headed up by a Freight Director of similar status to the Regional Directors. Similarly, it is essential that there is a mechanism within GBR for ensuring that all operators, passenger and freight, are treated in a fair manner.

**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.**

We agree that GBR’s new duties should be captured in the licence and that specific duties including the new one itemised in our answer to Question 2.

**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 believe it is the wrong message to, in effect, remove GBR from consequence where a breach occurs. Whilst we are a little sceptical as to the effectiveness of the ORR fining a publicly funded body and whether it will have any effect on behaviour, the act of ORR imposing a fine on GBR would emphasise the seriousness of any licence breach and should therefore be retained in law.  As the concern in 3.26 appears to centre around the loss of money to the industry, the obvious solution is to construct a mechanism where any such fine goes into a suitable ‘pot’ that invests in the industry.

**Question 16, 17, 18, 19, 20, 21** - No comment

**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 are not certain what is intended regarding the disclosure of data relating to freight sector participants. Given that the sector is largely commercial and highly competitive any proposals to apply these provisions to other than GBR passenger operators must be consulted widely.

**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.**

We support this proposal. The introduction of the Luxembourg Rail Protocol is expected to unlock significant financial savings for the rail sector in the leasing of rolling stock and other moveable assets.  Given that rail freight operates on narrow margins even a small reduction in leasing costs is a major benefit to the sector.

There are no obvious downside to adopting the Luxembourg Rail Protocol and we understand that all of the main political parties support its adoption. We believe that including a power in the Railways Bill to enable the ratification of the Luxembourg Rail Protocol will be the quickest path to reaching that ratification.

We support these proposals which are long outstanding and aim to reduce the costs of leasing for rolling stock.

**Question 24 (see Impact Assessments)**

**Are there impacts or risks of the policies proposed which have not been covered by the impact assessments? Please explain or provide evidence.**

The impact assessment does not appear to consider any risk arising from the integration of the passenger business and infrastructure. There is a risk that the new structure produces an actual or unconscious bias which restricts the access to efficient and sufficient rail paths for freight services. This would in turn restrict the ability of freight to attract private sector investment needed to deliver the UK growth aspirations.

The environmental impact assessment does not consider / embed the need to consider resilience in the face of climate change which will increasingly impact on the ability of GBR to provide an effective reliable network 24/7 for all. It also does not recognise the risk on relying on developing technologies to move to net zero actually being able to provide a practical solution to such issues as the power source of freight locomotives.

There is a presumption of efficiency savings through rationalisation. Experience from privatisation and anecdotal evidence on the early stages of GBR implementation is that this is focused on reducing staff numbers, with the most experienced (and therefore the most expensive) being the attractive focus for this. There is no impact assessment relating to the impact of loss of knowledge and experience from such an exercise and the introduction of GBR appears to risk repeating the painful experience of privatisation where knowledge was lost and which took years of expensive re-learning to replace, whilst the industry performance and reputation suffered.