Policy paper - https://www.gov.uk/government/publications/railways-bill/railways-bill-making-best-use-of-the-rail-network

Railways Bill factsheet: making best use of the rail network

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Our railways are one of our most important national assets, and the continued investment from taxpayers to maintain and enhance them means that we must make the best possible use of them. Therefore, given space on our railways is so limited, how we manage it is crucial to ensure optimum value to society.

In the future, there will be a mix of operators who run services on the Great British Railways (GBR) network:

- passenger services run by GBR (as GBR will take over mainline services that were previously franchised, such as Avanti, CrossCountry and Southeastern);
- passenger services run by devolved operators such as ScotRail, Transport for London or Transport for Wales
- freight services carrying goods to support our supply chains
- passenger services run by private sector 'open access operators' such as Lumo or Hull trains

A glossary of terms can be found in this document.

How does the system work today? What are the problems?

Today's access system is built on 30 years of complex legislation, regulations, contracts and codes that set out detailed rules on how operators can apply for and run services on the railways. The 2 pieces of legislation which set the rules for access today are the Railways Act 1993 (RA93) and the Railways (Access, Management and Licensing of Railway Undertakings) Regulations (AMRs).

The system has resulted in different organisations, (DfT, Network Rail (NR) and the Office of Rail and Road (ORR)) taking decisions on how the railway should be used. Essentially, no single body is accountable for how best to make use of the network.

This is problematic for several reasons. For example, when an operator wants to run a service (gain access), it must first apply to Network Rail who then takes a view on whether there is enough space to fit the service in. If it doesn't think there is (usually because doing so will impact existing services) it will refuse the application. However, the ultimate decision rests with the ORR. This can result in both ORR and Network Rail arriving at different outcomes.

Similarly, although Network Rail bears the cost of maintaining the infrastructure, the ORR is responsible for setting charges to recover those costs. This stops NR from being able to set charges in a way which complements best use of the network, or from setting incentives which will help to achieve the government's desired outcomes.

How will GBR make the best use of the network?

The Railways Bill will reform the existing rules for access and use of the railway by enabling GBR to take decisions on best use of the network.

GBR will decide how the network is used with a new process for how capacity is allocated, and how much non-GBR operators such as open access and freight will need to pay to use it (with a new charging framework).

It will make these decisions against duties clearly defined in the bill, public law principles including to act fair and transparently, and its own policies, which legislation requires GBR must consult on and publish.

The ORR will play a new role in this system, becoming a robust appeals body, holding GBR's access and charging decisions to account with a power to impose remedies on GBR if it deems this necessary.

New processes for GBR capacity allocation and timetable decisions

The Railways Bill will create a more efficient system that enables GBR to make the very best use of the network, comprised of the following steps:

- **Access and use policy**: the Railways Bill will require GBR to produce, consult on and publish an access and use policy (AUP) which must set out the processes that GBR will follow when making access decisions and the criteria it intends to use to make those decisions. This should include information about when operators might be invited to apply for access, how long they will have to apply, what the application process will look like, and other matters.
- **Capacity plans**: GBR will determine how best to make use of the available capacity through capacity plans. These will be developed and consulted on with stakeholders. GBR's capacity plans will allocate capacity to operators in the form of capacity commitments (legally binding commercial contracts between GBR and an operator).
- **Timetable production**: GBR will be accountable for developing the timetable in accordance with its capacity plans and any issued capacity commitments.
- **Appeals**: decisions made by GBR with regards to its AUP, capacity plans, timetable and performance and charging schemes are appealable to

the ORR, to ensure that GBR's decisions are fair and consistent with its duties and guidance set by ministers.

The government will preserve the existing access rights held by operators – specifically the 'schedule 5 rights' required to run services on the tracks – until they expire.

Stations, depots and service facilities

GBR must provide fair access to the service facilities it operates, including stations and light-maintenance depots. GBR will remain subject to the existing rules in the AMRs, however, it will be exempt from the provisions in the RA93 so that it is GBR, not ORR, who approves the access agreements for them.

GBR's charging and performance functions

The Railways Bill will require GBR to establish a charging framework, which it must consult on. The bill will say:

- GBR must at a minimum charge the 'cost directly incurred' to cover the cost of running the service, subject to exclusions (discounts or mark-ups)
- GBR must set charges in line with the new funding process to enable non-GBR operators to make long-term plans with a reasonable degree of confidence
- that GBR's charging decisions are appealable to the ORR

Charges already in place will be honoured until their expiry (April 2029)

Charging framework: table of charges

Type of charge	What do they cover
Cost directly incurred (CDI)	CDI refers to how much it will cost GBR to run a service on its track – for example, the basic wear and tear. The method for how this is calculated will be determined by GBR.
Charges lower than CDI: 'discounts'	The bill will allow GBR to offer discounts to the CDI if certain criteria are met (subject to state aid and competition rules). The list is intentionally non-exhaustive to give GBR flexibility to consider its own appropriate policies for when discounts might be offered.

Type of charge	What do they cover
Charges higher than CDI: 'mark-ups'	The bill will allow GBR to charge mark-ups on operators who can afford to do s by applying a test of affordability. Mark-ups may also be levied following investment into enhancements where the operator directly benefits from its use
Reservation charges	Where an operator fails to make use of an allocated path, GBR may levy a reservation charge as if the service had run. GBR will have discretion for when and how it uses this charge.

Performance schemes

GBR will be able to design bespoke performance schemes, in consultation with industry. It should aim to provide incentives to enhance punctuality, reliability and overall service quality. As today, the scheme will cover planned and unplanned disruption to protect all users operating services on the network. There will be a clear route to appeal to the ORR on performance.

What will happen to the role of the ORR in the new framework?

The ORR will act as a robust and independent appeals body for decisions made by GBR on the GBR network. The scope of these appeals will be set out in the bill, including clarity on who can raise an appeal.

The ORR will hear appeals relating to GBR's statutory decisions:

- taken under GBR's AUP
- taken under GBR's infrastructure capacity plan and timetable
- GBR's performance and charging schemes

The ORR will assess whether GBR has acted in accordance with its duties, whether it has appropriately reflected and actioned any guidance from the Secretary of State for Transport and whether it has been consistent with its own published policies and criteria (as set out in the AUP). The ORR will apply the same set of duties as GBR when hearing appeals to ensure there are no longer conflicting incentives: everyone must deliver on the shared goals for the railway.

When hearing an appeal, the ORR will have the following options:

- to dismiss it
- to send the decision back to GBR for reconsideration
- to substitute GBR's decision with its own

We would expect the ORR to select appropriate remedies on a case-by-case basis, determined in a way that proportionately considers the specific appeal.

The ORR will be a statutory consultee in the development of the AUP and have an important advisory role.

Infrastructure managers outside of GBR

Today, there are multiple infrastructure managers. The existing ORR role and legislation (RA93 and AMRs) will therefore continue to apply to any non-GBR infrastructure and facility managers, such as HS1 Ltd, Core Valley Lines and Transport for London. This means that the rules and processes which underpin access, charging and performance will remain in place for any infrastructure manager outside of the GBR network. The bill will require GBR to work collaboratively with these infrastructure managers, for the benefit of services which cross network boundaries.

The power to amend

As GBR's new processes evolve there may be opportunities for these infrastructure managers which sit outside of GBRs network to benefit from similar flexibilities that are being provided to GBR with this bill. We also want to ensure that where necessary, processes can align. To enable this, we will include a power to amend in the bill that will enable the Secretary of State to make changes to the AMRs and any necessary consequential amendments to the RA93.

The power will be subject to the 'affirmative procedure', which means there must be full scrutiny in Parliament and there must also be a formal consultation any time the power is used.

The role of devolved governments in access and charging

To enable effective collaboration between GBR and the devolved governments, GBR must have regard to the published strategies of Scottish and Welsh ministers. Devolved governments will also be statutory consultees on GBR's AUP.

Who does what in the current access framework

DfT/government

Sets the legal framework for access to the rail network- the roles, responsibilities and processes for infrastructure managers like Network Rail, train operators and ORR. In effect, who can take certain decisions, how they are taken and when they can take them.

Network Rail (NR)

The manager of the main infrastructure in GB. NR maintains a decision-making process for the sale of access rights. NR must:

- provide access to operators where capacity allows
- enter discussions with any operator who asks for access to NR infrastructure
- ensure all dealings and terms agreed with operators are fair and non-discriminatory
- be transparent regarding the terms of access and capacity of infrastructure
- make sure trains run safely on the network at their published times through the development of the working timetable

Train operators

Operators apply to NR for access rights to run services on its infrastructure. They also apply to other infrastructure managers such as HS1 to run services on their infrastructure. Under the current framework open access and freight operators have the legal right to be treated in the same way as any other operators in respect of applications for access, as stipulated in NR's Network Code.

ORR (economic and safety regulator)

ORR is the ultimate decision maker on access, providing an independent assessment of competing demands for network capacity. Once NR has agreed access terms with an operator, the access contract is passed to ORR for approval. This model is unusual, as in most European railways, rail regulatory bodies do not direct or determine access rights.

Glossary of terms

Access terms

Access and use policy (AUP)

An important document that will be owned and consulted on by GBR. It will set out criteria and processes for accessing GBR's infrastructure.

Access framework

Refers to the rules and practices that govern how access and charging is granted/determined.

Contracts

All passenger and freight train operators who want to use the network require a track access contract. These contracts outline the rights and obligations of operators and

are subject to periodic reviews and amendments. Currently, the ORR plays a role in approving these contracts.

Duties

Obligations placed on a body (such as GBR) in legislation, to, for example, be fair and non-discriminatory in its decision-making. See more information in the accountability factsheet.

Schedule 5 (In relation to contracts)

The access rights set out in schedule 5 of the track access contracts that an operator holds are the key description of what the train operator is buying from Network Rail (in future GBR). They are therefore an important part of each contract and protecting these rights will provide continuity for operators.

Timetable

The working timetable is the rail industry's version of the public national timetable It shows all movements on the rail network including freight trains, empty trains and those coming in and out of depots. It also includes intermediate times for journeys, including which stations a train is not scheduled to stop at.

Charging terms

Costs directly incurred (CDI)

CDI refers to how much it costs an infrastructure manager simply for running the service on its track – for example, the basic wear and tear with no contribution included into any additional costs of the railway.

Discounts

A lower charge that can be applied only to the CDI, so long as it achieves specific benefits for a limited time.

Mark-ups

A charge in addition to CDI to recover costs towards running the railway that do not fluctuate based on use (running a service). This charge may only be levied on those who can afford to pay.

Reservation charge

Where an operator fails to make use of an allocated path, a charge can be levied as if the service had run as intended (known as a 'no-show charge').