RAILWAYS BILL

Memorandum from the Department for Transport to the Delegated Powers and Regulatory Reform Committee

INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Railways Bill ("the Bill"). The Bill was introduced in the House of Commons on 5 November 2025.
2. The memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains why each power has been taken and the rationale for the procedure selected.

Persons and bodies within the DPM/Abbreviations

3. This memo refers to a number of persons and bodies. These are referred to as follows:
   a. The "Secretary of State": this refers to the Secretary of State for Transport.
   b. ORR: the Office of Rail and Road, the regulator for the rail industry
   c. DfT or "the department": the Department for Transport
   d. The 1993 Act: The Railways Act 1993.

PURPOSE AND EFFECT OF THE BILL

4. The primary purpose of the Bill is to enable the creation of Great British Railways (GBR), a new publicly owned body which will be the "directing mind" for the railways, taking responsibility for the railway infrastructure (e.g. tracks, stations) as well as operating most passenger train services in Great Britain. This means the Bill will be bringing "track and train" together.
5. The Bill aims to address the issues with our railways that have been identified, including unreliable services, low customer satisfaction and poor value for money. These issues are caused by a system which is overly fragmented, suffers from a lack of clear accountability, and contains perverse incentives and irregularities, such as a complex ticketing system under which it can be difficult for passengers to be sure that they have bought the most

appropriate fare. The new rail system that will be established by the Bill is designed to better meet the needs and expectations of those who rely on it.

6. The Bill will fundamentally alter the rail landscape in Great Britain. It includes provisions on a wide range of railway related topics. It comprises 93 clauses and 3 schedules. A summary is set out below:
7. **Part One** of the Bill deals with the establishment of Great British Railways (GBR) and the set-up of the new railway system.
    a. **Chapter one** creates a power for the Secretary of State to designate a body corporate as GBR. It sets out the statutory functions of GBR, which describe what the new rail body is intended to do. This section also provides that the Secretary of State and the Scottish Ministers can issue directions or guidance to GBR, and together with Schedule 1 allows the Secretary of State to issue a licence to GBR. The chapter also refers to Schedule 2 which contains provision relating to funding GBR's activities.
    b. **Chapter two** is about strategies, duties, and targets that will apply in the new railway system. It includes a new set of general duties that will apply, where appropriate, to GBR, the Secretary of State, Scottish Ministers, Welsh Ministers and ORR when these bodies exercise their relevant functions related to the railways and railway services. These shared duties will ensure that all the key players in the railway will share common goals and incentives. It also requires the Secretary of State to have a Long-Term Strategy for the railway and requires her to set a rail freight growth target, recognising the importance of freight to the economy and environment. Finally, it requires the Secretary of State to develop and publish Memoranda of Understanding with Scotland and Wales reflecting their roles in the governance and management of GBR.
8. **Part Two** of the Bill deals with passenger and station services.
    a. **Chapter one** sets out that the Secretary of State will designate the services that she may secure to be provided through a public service contract with GBR. Scottish Ministers and Welsh Ministers will designate services that they can either provide themselves or secure through a public service contract with a public sector company, including GBR. This chapter preserves the existing right for the Secretary of State, Scottish Ministers and Welsh Ministers to make exemptions from designation so that other operators can run services – one present example of this is the

services which have been devolved via exemption to Transport for London. Chapter one also ensures Ministerial oversight of GBR's fare setting and the continuity of certain discount fare schemes.

b. **Chapter two** establishes the new Passenger Watchdog (legal name the Passenger's Council). It sets out the key functions of the Passenger Watchdog including giving advice, securing independent alternative dispute resolution, conducting investigations and research, publishing information and standard setting.

c. **Chapter three** deals with the London Transport Users' Committee, to give it the same investigation and research powers as the new Passenger Watchdog.

9. **Part Three** deals with the role of the industry regulator, access to the railway network and any final provisions of the Bill.

   a. **Chapter one** deals with who can run trains on the railway network (who has "access"). It creates a new access process run by GBR, and an independent appeals process run by the ORR.

   b. **Chapter two** sets out further functions and duties of the ORR, GBR, Secretary of State, Scottish Ministers, Welsh Ministers and local government bodies. These include functions and duties relating to monitoring GBR, the publication of information, consultation and the provision of advice to GBR. Chapter two also contains two standalone provisions. The first is a power for the Secretary of State to make regulations to amend the Train Driver Licences and Certificates Regulations 2010. The second allows the implementation of the Luxembourg Protocol to the Cape Town Convention (as it applies to rolling stock) by statutory instrument.

10. **Part Four** contains the final provisions in the Bill relating to consequential provisions, regulations and commencement.

DELEGATED POWERS

General approach

11. The Bill contains 14 delegated powers for the Secretary of State to make regulations, of which 6 are Henry VIII powers. These are discussed in detail below.

12. The Bill also confers 9 powers which are not legislative in character, such as directions and guidance making powers. These are largely operational powers and follow established precedent for operational bodies of this kind. A full justification and explanation of the intended use of these powers is provided below.
13. There are also 2 de-hybridising provisions within the Bill. A full justification and explanation of these provisions is also provided below.
14. Accordingly, this memorandum has been separated into three parts: Part A for delegated powers of a legislative nature, Part B for delegated powers which are not legislative in character, and Part C for de-hybridising provisions.
15. The department has considered the use of powers in the Bill as set out below and is satisfied that they are necessary and justified.

Part A- Delegated Powers of a Legislative Nature

16. In summary, the 14 delegated powers of a legislative nature are:

1) **Designation of Great British Railways (GBR) – clause 1**: to empower the Secretary of State to designate GBR to run the railways.
2) **GBR functions – clause 3:** to empower the Secretary of State to add additional functions to GBR. While the full list of statutory functions (i.e. the activities that we expect GBR to undertake) are listed on the face of the Bill, this power enables functions to be added if that were to become necessary.
3) **Passenger services exemption from designation – clauses 28-29:** the Secretary of State, Scottish Ministers and Welsh Ministers are each given power to designate the railway passenger services that they may secure to be provided and, in the case of the Scottish Ministers and Welsh Ministers, that they may provide themselves. These powers replicate section 24 of the Railways Act 1993 which provides a mechanism for rail passenger services to be *exempted* from designation. This is the current mechanism by which the Secretary of State may allow a devolved authority, such as Transport for London, to run a rail service. The Bill replaces and simplifies that existing provision without substantially changing the power to make secondary legislation.
4) **Passengers' Council – clause 51:** this power replicates section 76(7B) and (7C) of the Railways Act 1993 to enable the Secretary of State to exclude services from the duties imposed on the Passengers' Council or modify the

Passengers' Council's duties for particular services (i.e. so that it does not have to investigate heritage/ tourism railway services, for example). Passengers' Council is the legal name for the new "Passenger Watchdog".

5) **A power to make provision about access appeals – clause 68:** a power to enable the Secretary of State to set out the steps that must be taken before an appeal is brought forward, including setting fees and time limits, and the practice and procedure to be followed.
6) **A power to amend existing access contracts – clause 71:** a power to allow the Secretary of State to amend existing access contracts between Network Rail and non-GBR train operators where required to facilitate the operational transition to the new railway system (in which GBR will replace Network Rail). The Government will preserve the core access rights (the Schedule 5 rights) of these contracts. This power also enables compensation to be granted to private operators.
7) **Amendment of the rules on access to and management of railway infrastructure – clause 72:** a power to enable the Secretary of State to amend the Railways (Access, Management and Licensing of Railway undertakings) Regulations 2016, which is the current body of law governing access to the railway network. The Bill also disapplies in relation to GBR much of this legislation, in favour of the new regime provided for by the Bill.
8) **Power to amend the definition of 'GBR infrastructure' – clause 73:** A power to ensure that the definition of GBR infrastructure in the Bill can be updated, e.g. to expand the definition if necessary as technology develops.
9) **Train driver licensing – clause 85:** To enable the Secretary of State to make regulations to amend the train driver licensing regime and confer a power on a specified person or body to make provision about related matters in a document (for example, to allow ORR to set technical standards).
10) **International interests in railway rolling stock – clause 86:** To enable the Secretary of State to make regulations which implement the Luxembourg Rail Protocol in the UK.
11) **Power to make transitional, transitory and consequential provision – clauses 88 and 89:** standard powers to make consequential amendments and supplementary, incidental, transitional or saving provisions.
12) **Power to make commencement provision – clause 92:** a standard power to bring elements of the Bill into force at the right time.

13) **Power to amend the licensing application process – Schedule 1:** a power to set rules relating to the process of applying for a railway licence, which replicates section 8(3) and (8) of the Railways Act 1993.

14) **A power to extend the financial assistance power in the Bill – Schedule 2:** empowers the Secretary of State to expand the scope of her financial assistance power (the Bill provides SoS with a non-legislative power to grant funding to GBR in respect of infrastructure i.e. for tracks, stations, and renewals). This delegated power is to allow that funding power to cover additional funding activities in the future.

Part B- Delegated Powers which are non-legislative in character

17. The delegated powers which are not legislative in character are:

1) **Directions – clauses 7 and 8:** To enable the Secretary of State and Scottish Ministers to issue directions to GBR, which GBR must adhere to.
2) **Guidance – clauses 9 and 10:** To enable the Secretary of State and Scottish Ministers to issue guidance to GBR, which GBR must have regard to.
3) **Funding the ORR – clause 14:** To allow the ORR to levy a fee on GBR to fund the exercise of ORR's non-safety rail functions.
4) **Rail strategies – clause 15:** To place a duty on the Secretary of State to prepare and publish a Long-Term Rail Strategy.
5) **Rail freight target – clause 17:** To place a duty on the Secretary of State to publish a rail freight growth target that GBR must have regard to.
6) **Designating passenger services – clauses 25-27:** The Secretary of State will have a power to designate services that they can secure through a public service contract with GBR. Scottish Ministers and Welsh Ministers will have the same power and will also have the power to designate rail passenger services which they can provide or secure through a public service contract to any public sector company, including to GBR. This replicates a provision that currently exists in the Railways Act 1993.
7) **ORR appeal practice and procedures – clause 68:** the ORR will have a power to set out in a document the practice and procedure to be followed on appeals under chapter 1 of Part 3, and may revise and replace it. This power

applies so far as these matters are not covered by regulations made by the Secretary of State under clause 68(6).

8) **Licensing – Schedule 1:** To enable the Secretary of State to issue and modify GBR's licence.
9) **Ticket retailing – Schedule 1**: To empower the Secretary of State to approve a document or "code of practice" prepared by the ORR in relation to GBR's retail industry management functions (such as "back of house" ticketing functions like the provision of railcards) and to require compliance with it via GBR's licence.

Henry VIII Powers

18. Six of the legislative delegated powers contained in the Bill include powers to amend primary legislation through secondary legislation (so-called "Henry VIII powers"):
    1) Power to add functions to GBR – clause 3
    2) Power to amend the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 – clause 72
    3) Power to amend the definition of 'GBR Infrastructure' – clause 73
    4) Power to implement the Luxembourg Rail Protocol – clause 86
    5) Power to make consequential amendments – clause 88
    6) Power to expand the scope of the financial assistance power in the Bill – Schedule 2.

PART A – LEGISLATIVE DELEGATED POWERS

19. The next section provides a clause-by-clause explanation for each of the legislative powers in the Bill and includes a justification and rationale in each case.

Clause 1: Power to designate Great British Railways (to run the railways).

Power conferred on the Secretary of State.

Power exercised by regulations.

Parliamentary Procedure: Negative resolution procedure.

Context and Purpose

20. The Bill gives the Secretary of State the power to designate a body corporate as “Great British Railways” through secondary legislation. Following Royal Assent, a company will be designated as GBR. GBR will be established out of Network Rail Infrastructure Limited (the main operating company of Network Rail, which currently manages the core rail infrastructure and some stations). This will ensure GBR can be established as quickly as practicable because it will minimise highly complex, time-consuming and potentially costly transfers of assets and contracts and staff as part of the project to set up GBR ahead of mobilisation. Creating GBR will involve consolidating existing train operating companies (e.g. Avanti, CrossCountry), DFT Operator (the publicly owned train operating company), Network Rail, and parts of the Rail Delivery Group (an industry collective which facilitates back of house functions for ticketing, for example) into one organisation.

Justification for taking the power

21. Enabling the Secretary of State to designate Great British Railways is required to establish GBR, which is the primary purpose of the Bill.
22. It is necessary for the appointment of GBR to be by statutory instrument given the statutory functions which will be conferred upon it from the appointment: the department will need time to ensure that GBR is ready, with the required staff and assets in place, before it can responsibly begin to exercise its statutory functions.
23. This approach also follows established precedent: the Highways Authorities, including Highways England, were designated in the same way under the Infrastructure Act 2015, and Great British Energy was also established this way in the Great British Energy Act 2025.

Justification for the procedure

24. This power is exercisable by regulations which would be subject to the negative resolution procedure. This procedure is considered appropriate because it follows full Parliamentary scrutiny of the nature and statutory functions of GBR during the passage of the Bill. The power is also of a limited nature i.e. it can appoint Great British Railways only (in comparison to the Highways England power, which could designate multiple bodies).
25. The Government notes the recent power to designate Great British Energy in the Great British Energy Act 2025 was designation by notice rather than by

regulations. The Government has proposed that Great British Railways' designation should be via regulations to offer more transparency to Parliament.

Clause 3: Power to add functions to GBR

Power conferred on the Secretary of State.

Power exercised by regulations.

Parliamentary Procedure: Affirmative resolution procedure.

Context and Purpose

26. This provision allows the Secretary of State to confer additional functions onto Great British Railways via statutory instrument. The full list of statutory functions is on the face of the Bill. This is a Henry VIII power which is limited to functions "relating to railways or railway services" as GBR is intended to be the directing mind for the railways, not to take on functions beyond that.

Justification for taking the power

27. The Government has provided the full list of functions on the face of the Bill, to provide clarity and transparency to Parliament about the breadth of activities we expect GBR to undertake. However, the power is necessary because it is possible that responsibility for additional functions may need to be passed to GBR in the future. In the future, the context of the railway industry may change significantly, enough to warrant a new function being added, for example, as a result of changes in technology, or to take on a role in rail safety education .
28. This power cannot be used to amend the current list of GBR's statutory functions in the Bill. However, as any new functions would have the same weight as if they were on the face of the Bill, we consider this a Henry VIII power.
29. As explained above, any new statutory function would need to be related to railways and railway services and could not introduce new or unexpected topics to GBR's remit. Therefore, this power cannot be used to undermine or contradict the intended purpose of the Bill or the intended purpose of GBR.
30. There is precedent for this type of power to add functions to a body after the initial primary legislation has passed, for example, the National Health Service

Act 2006 contains a power to add functions to the Special Health Authorities specified in the Act, in relation to Health Services in England. Please note that this power was to add functions to multiple different bodies (unlike our power for GBR) and followed the affirmative procedure.

Justification for the procedure

31. This power is exercisable by regulations which would be subject to the affirmative resolution procedure, which is appropriate given this is considered a Henry VIII power.

Clauses 28 & 29: Power to grant exemptions from designation

Power conferred on the Secretary of State, Scottish and Welsh Ministers

Power exercised by regulations.

Parliamentary Procedure: Negative resolution procedure.

Context and Purpose

32. Previously, section 23 of the Railways Act 1993 gave the Secretary of State the power to designate rail passenger services which should be provided by a franchised operator. After the Public Ownership Act 2024, section 23 now gives the Secretary of State the power to designate the rail passenger services provided by a public sector operator. Section 24 then gave the Secretary of State the power to grant exemption from the designation under section 23 (for example, in order to let devolved authorities run certain train services instead, such as Transport for London, etc).
33. The Railways Bill repeals sections 23 and 24 of the 1993 Act which confer the power to grant exemptions from designation, and then replicates the power in this Bill, with two changes:
    a. To account for the fact that the railways will now be publicly owned and there will not be franchised train operators as there were before, the Secretary of State will now have the power to designate passenger services that they can secure through a public service contract with GBR. The Secretary of State will then also be able to grant exemptions from that designation, as before.
    b. The power to grant exemptions will now be exercisable only by regulations, which will be subject to the negative resolution procedure. This is a change to section 24 of the 1993 Act as that power was

exercisable simply in writing, if it followed a request for an exemption. We think regulations are more appropriate because it will provide greater transparency to Parliament regarding which services are designated.

34. The Bill gives Scottish Ministers and Welsh Ministers an equivalent power to grant exemptions from designation for Scottish-only services and Welsh-only services respectively. This is very similar to the power that they have in section 24 of the 1993 Act but again reflects the removal of franchising and the move to public ownership. This power will be exercisable by regulations which will be subject to the negative resolution procedure in the Scottish Parliament if it relates to Scotland-only services, and the Senedd if it relates to Wales-only services.

Justification for taking the power

35. Devolved Authority-run services, such as those contracted by Transport for London and the Liverpool City Region are critical enablers of the railway industry. The Secretary of State must retain the ability to devolve further services if the right circumstances arise and are agreed via the *right to request further rail devolution* process, committed to in the English Devolution White Paper 2024. On discrete networks such as those mentioned above, devolution can enable benefits for communities by harnessing local knowledge in the delivery of services.
36. This power, and the process for devolution arising from it, is familiar to industry and therefore we have opted to retain it to ensure that devolution, where desired and approved by the Secretary of State or Scottish or Welsh Ministers, continues to work effectively for everyone.

Justification for the procedure

37. This power is exercisable by regulations which would be subject to the negative resolution procedure. This procedure is considered appropriate because it is a limited/specific power with a specific outcome, and also because it upgrades the previous method of designation by writing. We would expect decisions to devolve rail services to be taken after consultation with stakeholders as part of the *right to request rail devolution* process committed to in the English Devolution White Paper in December 2024.

Clause 51: Power for Secretary of State to exclude services from the duties imposed on the Passengers' Council (the "Passenger Watchdog").

Power conferred on Secretary of State

Power exercised by regulations

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

38. This power enables the Secretary of State, in consultation with the Passengers' Council, to exclude particular rail services from the duties imposed on the Passengers' Council ("currently known as "Transport Focus"). This prevents the Passenger Watchdog from expending resource unnecessarily, for example, conducting mandatory investigations into heritage rail trains, which are mainly used for tourism and are not part of the mainline network. The power also enables the Secretary of State, in consultation with the Passengers' Council, to modify the application of the duties imposed on the Passengers' Council. This power replicates the same power from 76(7B) and (7C) of the 1993 Act but extends it to all of the Watchdog's duties.
39. The power has been used in the past to lay the following statutory instrument: ***The Railways (Rail Passengers' Council and Rail Passengers' Committees) (Exemptions) Order 2003*** which exempts services from investigations if they relate to passenger train operators which (1) do not have to provide through ticket facilities; and (2) are exempted from having a licence, such as heritage and charter rail services. This means that the Passengers' Council is currently not legally obliged to investigate issues with the provision of these services (although it can if it so chooses).
40. This exemption is still in force today. In total, there have only been 2 statutory instruments made under this power – it is used infrequently, for situations in which there is a genuine need for an exemption only, or alternatively, to bring operators into their remit with appropriate modifications.

Justification for taking the power

41. It is necessary to ensure that the Passenger Watchdog has the same ability to protect its resources and vary its activities that the Passengers' Council does today.

42. It is not appropriate, nor a proportionate use of resources, to apply certain duties (such as investigation or alternative dispute resolution provision) to such services which are not part of the wider national network, are not licensed and mainly operate for tourism or leisure purposes.
43. There is general agreement amongst stakeholders, including Transport Focus, that it is proportionate and sensible to maintain this delegated power to ensure the future Watchdog can focus its resources effectively and that the duties can be adapted to services that are provided through different arrangements.
44. We believe this delegated power could be used to both exclude and include services as service providers change over time. For example, if a service was newly devolved in England, and it technically fell within the exemption, the power would be needed to ensure that it could come under the Watchdog's oversight.

Justification for the procedure

45. This power is exercisable by regulations which would be subject to the negative resolution procedure. This procedure is considered appropriate considering the limited expected use of the power and that it has proven generally uncontroversial.

Clause 68: Power to make provision about access appeals

Power conferred on Secretary of State

Power exercised by regulations

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

46. The Railways Bill sets out that anyone who is aggrieved by a decision of GBR relating to access, charging or performance may appeal to the ORR. The ORR has the ability to allow or dismiss the appeal. Where the ORR allows an appeal, the ORR may remit the decision to GBR for reconsideration, and may include directions as to that reconsideration. In addition, on appeals against decisions on applications for inclusion in the working timetable or charging

and performance decisions, the ORR may quash all or part of the decision and, in specific circumstances, substitute its own decision.

47. While the ORR has power to set out its practice and procedure, this power goes further, and if necessary can be used by the Secretary of State to make provision (a) about steps that must be taken before such an appeal can be brought, (b) set fees and time limits and (c) set the procedure to be followed in case of appeal.

Justification for taking the power

48. This is a standard provision to set out the process and procedures for an appeal. It is important that the process and procedures for an appeal may be set out with statutory backing, but to enshrine these on the face of the Bill would not provide flexibility for the process and procedures to be updated over time. Therefore, the Government considers it necessary and proportionate to be able to set out and update this in the future (for example, if necessary to set application fees), and judges that doing so by regulations provides the right level of transparency for those likely to be affected by it.

Justification for the procedure

49. The Bill establishes the ORR as the appeals body in relation to access appeals and sets out the available outcomes of such an appeal. This power only allows the Secretary of State to set out the process and procedures associated with those appeals, so it is judged to be appropriate for the negative procedure to apply. The Government notes that the power to make regulations relating to air transport licensing under section 67(5) of the Civil Aviation Act 1982, on which this process is based, is also subject to the negative procedure.

Clause 71: Power to amend existing access contracts

Power conferred on the Secretary of State.

Power exercised by regulations.

Parliamentary Procedure: Negative resolution procedure.

Context and Purpose

50. This power allows the Secretary of State to amend existing access contracts between Network Rail and private operators if needed to facilitate the operational transition to the new railway system (in which GBR will replace Network Rail).
51. Track access contracts contain the contractual rights of train operators to use the railway network (i.e. to run trains on it).
52. GBR will inherit track access contracts that currently exist between Network Rail and operators but the regime that governs access to GBR's network will be different from the current regime governing access to Network Rail's network (due to changes made in this Bill). Therefore, there is a need for this power to ensure the agreements are still fit for purpose in the new regime, and to account for the role of GBR.
53. The power is time-limited for 15 years, which is the length of time until the expiry of the final existing contract. It will not be needed beyond that point.

Justification for taking the power

54. Once GBR is established, we expect that several features of the current access contracts will not be consistent with the new access regime set out in the Bill. Therefore, the power to amend contracts is required to ensure that the new access regime can be established without issues arising.
55. Although the Bill will provide for amendments to be made to existing contracts, the Government has committed that the core rights in these contracts will be preserved as far as possible (this includes a commitment to maintain the Schedule 5 rights in the contracts, which enable operators to run trains on the network, and the charges that have been agreed until the end of the next funding period). Accordingly, the department considers that the core commercial value of the access contracts – enabling the contract holder to run trains on GBR's network and thereby make a commercial gain – will not be unduly affected.
56. This is a necessary power to ensure that all existing access contracts are consistent and workable with the new access regime when it is introduced. In the Government's consultation, there was support within industry for the need for this power.
57. The power to amend contracts will not be exercised lightly and would only be used for absolutely necessary changes to contracts, such as to reflect the

creation of GBR. The power also provides the ability for the Government to allocate compensation to operators if needed.

Justification for the procedure

58. This is a transitional and technical matter and the changes will only be made to facilitate the new access regime set out in the Bill. These changes may need to be made to many relevant access contracts in order to achieve a consistent workable contractual framework - noting that there are currently operators with contracts stretching some years into the future
59. The power will be exercised through regulations (negative procedure) and will be time limited, expiring 15 years after Royal Assent because it will not be needed after the expiry of the final contract.
60. It is common for transitional issues connected with the commencement of a Bill and the transition to the new regime (as this is) often have no procedure. The Government considers that the added transparency and scrutiny that is brought by the negative procedure is appropriate in this case. The Government does not consider that a power to make transitional changes in connection to the commencement of the Bill justifies the affirmative procedure, or the hybrid procedure that could be triggered by it.

Clause 72: Power to amend the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the AMRs)

Power conferred on the Secretary of State.

Power exercised by regulations.

Parliamentary Procedure: Affirmative resolution procedure.

Context and Purpose

61. This provision introduces a delegated power to amend the AMRs. The AMRs are a body of secondary legislation derived from our former membership of the European Union. They set out the rights and obligations of various rail bodies pertaining to access and the use of the railway. For example, the AMRs set out detailed rules on allowing access to the network and timetabling that infrastructure managers (bodies who manage tracks and stations) must adhere to, to ensure there is fair and transparent network access for people who want to operate train services. They also include detailed and technical

provisions, for example, in relation to categories of delay, and definitions of service facilities. This power allows the Secretary of State to amend the AMRs by regulations.

62. Please note that the Bill already disapplies most of the AMRs for GBR in the Bill, to replace them with the new access regime set out on the face of the legislation. However, the AMRs will still apply to the non-GBR infrastructure managers and facility managers such as the Core Valley Lines that are owned by the Welsh Ministers. Therefore, in the future, there will be two legislative frameworks governing access to the tracks: one for GBR, which is set out on the face of this Bill, and one for other infrastructure managers, which will be in the AMRs.
63. This is a Henry VIII power because the Secretary of State can also make consequential amendments to primary legislation.

Justification for taking the power

64. The power is required to ensure sufficient regulatory alignment between GBR and the other infrastructure managers (as above, such as HS1 and the Core Valley Lines) to ensure smooth passage of trains across infrastructure managers as the GBR network beds in and as GBR makes decisions about its access regime. For example, the power could be used to amend the December date currently stipulated by the AMRs for when the working timetable must come into effect. It is likely that GBR will want to move away from this given it is wholly unsuitable in Britain with the risks of weather-related events, staff absences due to the Christmas season and engineering works that usually take place between Christmas and New Year. If so, we anticipate that other infrastructure managers would want to follow suit to avoid being affected by the same risks, as well as to ensure consistency of the timetable date across all networks. To achieve this, we would need to amend the AMRs for those other infrastructure managers so they could keep pace with GBR's decision.
65. It should be noted that given most railway infrastructure and services will fall under GBR, the application of this power is limited in practice: the most substantive changes to the AMRs, with the most operational effect, take place on the face of the Bill.

66. This Government has already consulted on the concept of the power to amend the AMRs as part of the Railways Bill Consultation. As set out in the Government's response to the Consultation Document, responses from industry were broadly supportive of the need for this power.

Justification for the procedure

67. The Government is aware that a power to amend the AMRs is broad in nature, particularly given it is a Henry VIII power. Therefore, regulations will be subject to the affirmative procedure, and the power can only be exercised following mandatory statutory consultation – which is in line with guidance previously given by the DPRRC in relation to a similar power in the Conservative Government's Rail Reform Bill which went through pre-legislative scrutiny in 2024.
68. Clause 89 of the Bill provides that if a draft instrument under this power would be treated as hybrid, it is to proceed as if it were not a hybrid instrument. The Government is satisfied that the consultation requirements related to the power provide the appropriate protection that would otherwise normally be afforded by the hybrid procedure. More information on these de-hybridising procedures can be found in Section C of this memorandum.

Clause 73: Power to amend the definition of 'GBR infrastructure'

Power conferred on the Secretary of State.

Power exercised by regulations.

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

69. The Railways Bill defines GBR infrastructure as *railway infrastructure operated by or on behalf of GBR*. This power allows the Secretary of State to amend that definition.

Justification for taking the power

70. The power allows changes to the definition of GBR infrastructure to remain consistent in the context of updates to related definitions made under the clause 72 power to amend regulations about non-GBR infrastructure. In addition, this power would enable the scope of "GBR infrastructure" covered

by the new access regime in this Bill to be amended, for example, to encompass new technological advances.

Justification for the procedure

71. As this power allows the Secretary of State to amend the definition found in the Railways Bill, this is a Henry VIII power. Accordingly, this power is subject to the affirmative procedure. Powers to amend definitions are common in legislation to ensure necessary updates can be made when required.

Clause 85: Power to amend the train driving licensing regime

Power conferred on the Secretary of State.

Power exercised by regulations.

Parliamentary Procedure: Affirmative resolution procedure.

Context and Purpose

72. This power will enable the Secretary of State for Transport to amend the Train Driving Licences and Certificates Regulations 2010 (TDLCR) and associated train driving licensing legislation. This legislation sets out the requirements that ensure train drivers recruited into the rail industry are competent, medically and psychologically fit, and trained on the infrastructure, rolling stock and routes they are to be deployed on. This enables them to drive trains safely and confidently.
73. In 2022, the DfT and the rail safety regulator (the ORR), who administer the licensing of train drivers, undertook a statutory Post-Implementation Review ("PIR") of the existing regime as it applies in Great Britain, in consultation with the rail sector and public. The PIR was published on 19 May 2023 and found there were common concerns that the regime contains outdated requirements that have not kept pace with changes in technology, methods and best practice.
74. The purpose of this power is therefore to provide a mechanism for the Government to update the regime over time to reflect the evolution of train driving as a profession, as well as advances in technology and wider structural changes to the industry.

Justification for taking the power

75. There is a clear need to ensure that the train driving licensing regime can be updated regularly and currently there is no enduring power to make these changes. One example regards the tests for colour blindness set out in Schedule 1 (Medical requirements) of the TDLCR, which name the Ishihara test as one to be used by doctors when looking at colour blindness. This is despite there being more modern methods available to industry – e.g. the Colour Assessment and Diagnosis test, or the Farnsworth Dichotomous test – which are more effective at determining the severity of colour blindness. The types of test and methods available to industry evolve over time as technological advances and breakthroughs in science are made; more frequently than primary legislation is made available to implement changes.
76. Moreover, updating e.g. colour blindness tests to the correct test is evidently uncontroversial. The primary legislation process could also be too slow from an industry perspective, given that outdated requirements can have operational impacts, such as train drivers being unable to be deployed due to failing an outdated medical test, when under more effective tests they could be deployed with adaptations.
77. This power will ensure the legislative framework for train driving remains fit for purpose, supporting the operational effectiveness of the railway system.

Justification for the procedure

78. This power is exercisable by regulations which would be made subject to the affirmative resolution procedure. This procedure is considered appropriate because of the importance of ensuring legislative proposals that could have safety impacts are subject to scrutiny, which is in the interests of passengers, workers and wider public.
79. The power also allows the Secretary of State to delegate to another person or body the power to issue notices setting technical standards in relation to train drivers and the licences and certificates they are required to hold.
80. The clause also contains a statutory requirement for proposals to be subject to consultation before they are progressed, which will provide an additional level of scrutiny to ensure any policy proposals are developed with due regard to all available evidence from interested parties and the industry.

Clause 86: Power to implement the Luxembourg Rail Protocol

Power conferred on the Secretary of State.

Power exercised by regulations.

Parliamentary Procedure: Affirmative resolution procedure.

Context and Purpose

81. This clause allows the Secretary of State to implement the *Convention on International Interests in Mobile Equipment* signed at Cape Town on 16 November 2001 (as it relates to railway rolling stock), and the Protocol to that Convention on matters specific to railway rolling stock ("the Luxembourg Protocol"). The Secretary of State can implement the agreements via regulations so that the UK can ratify the Protocol. Implementation and ratification cannot take place until the procedure under Part 2 of the Constitutional Reform and Governance Act 2010 has been completed, and Parliament has considered whether the agreements should be ratified.
82. The Convention is an international agreement signed by the UK Government in 2001, which sets up an international system to allow those selling or leasing equipment to have security to lend across borders. There are 4 Protocols to the Convention relating to aircraft and helicopters, **railway rolling stock,** space equipment and mining/agricultural equipment – **but this power only deals with railway rolling stock.**
83. The overall aim is to provide access to cheaper railway rolling stock both in the UK and overseas, as finance can be secured and/or rolling stock leased from non-UK sources (and UK rolling stock companies can lease abroad at lower risk). There is broad support within industry for this provision, and particularly for reducing rolling stock costs, which the Protocol could support.

Justification for taking the power

84. There is clear precedent for the Luxembourg Protocol (and indeed international rail agreements more generally) to be implemented via regulations, rather than primary legislation. For example, the Convention concerning International Carriage by Rail was implemented by regulations (in 2005) made using the power in section 103 of the Railways and Transport Safety Act 2003. The power in this Bill is closely modelled on that power, although we have narrowed this power as there were elements which were not needed in this context.

85. Additionally, international agreements are often subject to regular amendment. In this case, detailed rules on the identification and labelling of railway rolling stock are updated at least annually, and those updates may require us to amend the provisions which implement these parts of the Luxembourg Protocol. If the Luxembourg Protocol were implemented in primary legislation, amending the legislation would be more challenging.
86. Given that the Protocol is uncontroversial and supported by industry, the Government considers it appropriate to implement the details of the agreement by regulations, having indicated the intent to do so on the face of this Bill.

Justification for the procedure

87. This is a Henry VIII power, necessary due to amendments which are likely to be required to existing Acts of Parliament to implement the protocol. It is proposed to be subject to the affirmative procedure.

Clauses 88 & 89: Power to make consequential, transitional and transitory provision

Power conferred on the Secretary of State.
Power exercised by regulations.
Parliamentary Procedure: Affirmative procedure if the regulations made modify primary legislation, but negative resolution procedure in other cases.

Context and Purpose

88. Clause 88 allows the Secretary of State to make consequential provisions, and clause 89 allows regulation-making powers to include supplementary, incidental transitional or saving provisions.
89. The transition from one railway regime to another is an extremely complex process, with thousands of jobs, pensions, and billions of pounds at stake, so this power is essential to ensure that we have flexibility in case any part of the operational process happens at a different time or pace to what is expected. This is a standard power to make consequential, transitional or saving provision in connection with the coming into force of any provision of a Bill.
90. The powers conferred by clause 88 are limited by the fact that any amendments made under this regulation-making power must be genuinely

consequential on provisions in the Bill. This power cannot make policy changes.

91. Whilst every effort has been made to identify, and address, the necessary consequential amendments in the Bill, given the high volume of legislation relating to railway services it is considered prudent to include the power to support a properly functioning statute book.

Justification for taking the power

92. The transition from the old rail system to the new one is highly complex, and there is a risk that elements of the transition proceed differently or face challenges that could not have been predicted during drafting. The power is intended to ensure that trains can continue running during the transition to the new rail system.
93. A power to make transitional or saving provision is often needed when bringing legislative provisions into force, particularly when transitioning between two legislative regimes as we are doing here.
94. A power to make consequential amendments is standard to enable the tidying up of the statute book.

Justification for the procedure

95. Clause 88 permits the amendment or revocation of primary legislation, meaning it is a “Henry VIII” power. As such it is considered appropriate that it is subject to the affirmative resolution procedure, insofar as the amendments relate to primary legislation, in order to ensure full and effective scrutiny of its use.
96. In respect of amendments that do not affect primary legislation, the power will be subject to the negative resolution procedure.
97. Clause 89 of the Bill provides that if a draft instrument under this clause would be treated as hybrid, it is to proceed as if it were not a hybrid instrument. As this power is restricted to consequential and transitional measures and cannot be used to make policy changes, the Government does not consider it necessary to make provisions subject to the hybrid procedure. More information on the de-hybridising provisions in the Bill can be found in Section C of this memorandum.

Clause: 92: Power to make commencement regulations

Power conferred on the Secretary of State.

Power exercised by regulations.

Parliamentary Procedure: none.

Context and Purpose

98. A series of standard powers for the Secretary of State to bring the Bill into force by commencement regulations.

Justification for taking the power

99. The power will enable the Secretary of State to commence those provisions of the Bill that are not due to commence automatically at an appropriate time.

Justification for the procedure

100. Consistent with common practice, commencement regulations under the clause are not subject to any parliamentary procedure. Parliament will have approved the principle of the provisions in the Bill by enacting them; commencement by regulation enables the provisions to be brought into force at the appropriate time. This is necessary to ensure that the new legislative regime comes into force at the right time in relation to the operational transfer which is happening to create GBR and move from one railway regime to another.

Schedule 1, paragraph 3: Power to prescribe railway application procedures

Power conferred on the Secretary of State.

Power exercised by regulations.

Parliamentary Procedure: Negative resolution procedure.

Context and Purpose

101. Section 8 of the Railways Act 1993 currently allows the Secretary of State to prescribe, by regulations, how operators can apply for railway licences, including rules regarding the charges for, and the publication of, applications for licences required by section 6 of that Act. This power, which will be new section 8B of the 1993 Act, replicates the section 8 power because we are amending some of the licensing provisions in the Railways

Act 1993 to add provision about GBR's licence. Prior to making regulations under this section the Secretary of State must consult the Office of Rail and Road.

102. Please note, it is an offence to operate a railway asset (a train, network, station or light maintenance depot) without a licence, unless an exemption has been granted.

Justification for taking the power

103. A power to make regulations setting out the procedures for applications enables the Secretary of State to ensure that licence applications decisions are conducted transparently and fairly by setting out the processes in legislation. By setting out the procedures in secondary legislation, the Secretary of State also ensures that there is flexibility to change the technical and detailed procedures for applications should that be required (for example, regulations may be used to set the licence application fee, which would change over time).

Justification for the procedure

104. A power such as this is common (for example, there is a similar power in section 65 of the Civil Aviation Act 1982) and uncontroversial and is usually subject to the negative procedure. The provision in section 8 of the Railways Act 1993, upon which this power is based is also subject to the negative resolution procedure.

Schedule 2, paragraph 6: Power to expand the scope of financial assistance power

Power conferred on the Secretary of State.

Power exercised by regulations.

Parliamentary Procedure: Affirmative resolution procedure.

Context and Purpose

105. This power allows the Secretary of State to expand the scope of the funding provision in paragraph 6 of Schedule 2 of the Bill (the "Funding Power"). The Funding Power enables the Secretary of State to provide financial assistance to GBR so it can carry out the activities in its five-year business plan. Currently, the Funding Power is limited to providing financial assistance for business plan activities "carried on in exercise of Great British

Railways' function under clause 3(1)(a)" (i.e. managing, operating, maintaining, renewing and improving railway infrastructure, like tracks and stations). The delegated power will give the Secretary of State the power to expand this scope to other activities (for example, funding running passenger train services, which is currently provided on an annual rather than a 5-year basis). All funding to GBR via the Funding Power must be published, and material changes to the funding settlement in-life must also be published and the ORR notified.

106. The ability to extend the Funding Power via regulations is intended to expand the categories of funding that are captured by these obligations.

Justification for taking the power

107. The Secretary of State has an existing broad power under the Railways Act 2005 to provide financial assistance to any person for (a) the purpose of securing the provision, improvement or development of railway services or railway assets; or (b) for any other purpose relating to a railway or to railway services.

108. Therefore, the expansion of the Funding Power to other activities should not materially expand the scope of financial assistance that the Secretary of State is able to provide GBR. Instead, the delegated power enables the Secretary of State to expand the categories of funding which fall under this particular new Funding Power (which has specific legislative obligations attached to it, i.e. that it leads to a 5-year funding settlement and that transparency and ORR notification is required for any material mid-settlement changes). The power to extend the funding power to other activities is required because once GBR is more established and Ministers have more experience of funding an integrated body, Ministers may decide it is appropriate to expand the scope of the Funding Power (e.g. to passenger services, which is currently not funded over such a long period). At that point, there should be transparency around the change, and therefore we are providing that this should be achieved via regulations.

Justification for the procedure

109. Given the likely parliamentary interest and that this is a Henry VIII power, regulations will be subject to the affirmative procedure, ensuring Parliamentary scrutiny.

PART B – ADDITIONAL POWERS WHICH ARE NON-LEGISLATIVE

110. The next section provides a clause-by-clause explanation for the powers in the Bill which are non-legislative in nature, and which were deemed appropriate to note to the Committee. This section includes a justification and rationale in each case.

Clause 7 & 8: Power for the Secretary of State and Scottish Ministers to issue Directions to GBR

Powers conferred on the Secretary of State and Scottish Ministers.
Power exercised by Secretary of State or Scottish Ministers publishing a formal direction.
Parliamentary Procedure: none.

Context and Purpose

111. The Secretary of State already holds statutory direction-making powers in relation to the railways in limited circumstances. For example, under section 118 of the Railways Act 1993, the Secretary of State can issue binding directions to all operators (including private operators) and the ORR in times of war, severe international tension, or national emergency. These powers are binding, must be in writing, and may be enforced through civil proceedings. However, those existing powers are narrow in scope and designed for exceptional national security scenarios.

112. The Bill provides a new, broader power for the Secretary of State to issue directions to GBR on the exercise of its statutory functions. This reflects GBR's unique status as a publicly owned, system-wide body responsible for both infrastructure and operations. Given that the Secretary of State is the sole shareholder in GBR and ultimately accountable to Parliament for the outcomes achieved by the railway, we assess that it is appropriate that the Secretary of State should have the ability to intervene where necessary (and as a last resort, not as a business-as-usual tool). Given that GBR may also provide services on behalf of Scottish or Welsh Ministers (where they are

delegated to GBR or where devolved administrations contract GBR to secure their services), the Secretary of State must get the consent of Scottish or Welsh Ministers to issue a direction to GBR that concerns services which the devolved administration has delegated or contracted GBR to provide.

113. In addition to the Secretary of State, the Bill also provides the power for Scottish Ministers to issue directions to GBR on the exercise of its statutory functions within Scotland, but only in relation to Scottish Railway activities.

114. The Secretary of State, in consultation with Scottish Ministers, will have the power to revoke a direction of Scottish Ministers where it is inconsistent with directions issued by the Secretary of State, or where it appears the direction will affect railways activities outside Scotland or otherwise may affect a reserved matter.

Justification for taking the power

115. The Bill has been designed to provide the Secretary of State with effective oversight over GBR. The new direction-making power is necessary and proportionate because:

- The Secretary of State, as sole shareholder, retains overall democratic accountability for GBR's performance and outcomes and must be able to respond if GBR is failing to deliver.
- Without a formal direction-making power, the Secretary of State would lack a decisive mechanism to ensure compliance where GBR is pursuing a course inconsistent with government policy or failing to discharge its obligations.
- Directions provide a clear, binding mechanism to hold GBR to account where other interventions, including guidance, have not been sufficient.

116. The power ensures the Secretary of State can act swiftly and transparently should there be serious operational failures, unforeseen crises, or to correct the policy of, or strategic direction set by, GBR if deemed necessary.

117. It is also correct that, as a funder, Scottish Ministers also have powers to direct GBR within their devolved settlement.

118. The Secretary of State remains fully accountable to Parliament, and Scottish Ministers remain accountable to the Scottish Parliament, for how and

when the power is used, and directions must be published. This reinforces the democratic oversight framework within which GBR will operate.

Justification for the procedure

119. Directions currently issued by the Secretary of State to rail industry bodies are not subject to Parliamentary scrutiny, and there is clear precedent for this approach. For example, the direction-making power in the Infrastructure Act 2015 for National Highways follows the same procedure.

120. Further, given that directions are intended to be a reactionary lever used as a last resort, publication provides appropriate transparency while ensuring the Secretary of State and Scottish Ministers retain the ability to act swiftly where required.

Clause 9 & 10: Power for the Secretary of State or Scottish Ministers to issue Guidance to GBR

Powers conferred on the Secretary of State and Scottish Ministers.
Power exercised by Secretary of State or Scottish Ministers publishing a guidance document.
Parliamentary Procedure: none.

Context and Purpose

121. The Secretary of State issues non-statutory guidance to the rail industry today and has a strong influence over train operating companies through the franchise agreements (with train operating companies) and service agreements with the public operator, DfT Operator Ltd. The Secretary of State will remain ultimately responsible for the rail industry's performance. The Bill therefore provides the Secretary of State with a statutory power to issue guidance to GBR on the exercise of its statutory functions which will enable the Secretary of State to support GBR delivery. Similar to the power to make directions, the Secretary of State may only create guidance for GBR in relation to a service provided for a devolved administration where the relevant devolved administration provides their consent. Through guidance the Secretary of State will be able to articulate to GBR clearly what expectations they have and how they intended GBR to deliver specific requirements or strategic priorities.

122. This power will be accompanied by the statutory duty that GBR must have regard to guidance issued by the Secretary of State. These provisions will ensure that guidance issued by the Secretary of State on how GBR should deliver will be properly considered by GBR, whilst retaining GBR's operational independence as the directing mind for the sector. This balance is essential to ensure that in the new model GBR has the space to act as an integrated, efficient, and commercially effective rail body, but in a way that facilitates the Secretary of State's role as sole shareholder with direct accountability to Parliament, for the performance of GBR, and the wider rail sector.

123. Scottish Ministers will also have the ability to issue guidance to GBR on the exercise of its statutory functions within Scotland, but only in relation to Scottish railway activities. GBR must have regard to this in the same way it does Secretary of State guidance.

Justification for taking the power

124. The Bill is designed to provide the Secretary of State and Scottish Ministers with the appropriate mechanisms to hold GBR to account while preserving its operational independence. The ability to issue guidance gives the Secretary of State and Scottish Ministers a proportionate and transparent way to influence GBR's delivery and strategic direction. The need for this power is particularly acute because of the structural shift to public ownership. While the Secretary of State and Scottish Ministers will continue to be able to steer passenger service operations outcomes through contracts under section 31 and/or arrangements under section 4, this power will offer them a mechanism to guide GBR as the integrated body. These powers will give the Secretary of State and Scottish Ministers the appropriate levers to ensure that they can continue to ensure that the railways deliver in the interests of users, taxpayers and the wider public.

Justification for the procedure

125. The Government considers the requirement for the Secretary of State or Scottish Ministers to publish guidance issued to GBR sufficient to enable scrutiny and transparency.

126. The Government acknowledges the Committee's guidance that "mandatory guidance is a contradiction in terms". Accordingly, the Bill is clear

that GBR must “have regard” to guidance issued by the Secretary of State, but the guidance will not establish binding outputs.

Clause 14: Power for the ORR to levy a fee on GBR to fund the exercise of its non-safety rail functions

Power conferred on the ORR.

Power exercised by ORR providing a published notice to GBR.

Parliamentary Procedure: none.

Context and Purpose

127. This provision will give the ORR the statutory power to levy a fee on GBR. This will replace the existing Network Rail licence fee, which Network Rail pays to fund the majority of the ORR’s non-safety functions. The purpose of this power is to ensure the ORR continues to have an independent funding stream under the GBR model, because as an independent regulator it should not be directly funded by the Government. Putting the levy in legislation (rather than in GBR’s licence, which the Secretary of State would be able to modify, for example) ensures the independent regulator’s funding stream is future proofed.

128. Currently, the ORR does not consult Network Rail or DfT on the fee; this is an important principle in guaranteeing regulatory independence. The ORR sets the fee through its annual business planning process whereby the ORR agrees its overall income cap with His Majesty’s Treasury (HMT) (subject to scrutiny) but chooses how to split this between safety and economic regulation functions.

Justification for taking the power

129. The Bill will provide a new statutory power to the ORR to levy a fee on GBR to cover the costs of the ORR’s rail functions which are currently funded from the Network Rail licence fee. The levy will provide the ORR with a legally guaranteed funding source that the regulator can rely on independently of the Secretary of State. It also provides the ORR with a stable, predictable funding stream that enables it to plan and carry out its activities effectively and efficiently.

130. There are no known difficulties with the proposed new statutory power. The ORR already raises its funding for its safety activities via a statutory levy, and for its economic regulation activities via the Network Rail licence fee.

131. With the ORR's functions and funding both guaranteed in statute, this mechanism would provide a clear statement of the ORR's independence. The ORR has a key role in promoting trust and confidence in GBR among the public, stakeholders, Ministers and third-party businesses which use and invest in the railway. Funding decisions should therefore be kept separate from organisations that have a vested interest in the ORR's decisions (which is why GBR, despite paying the levy, will have no ability to determine the amount).

132. There will be no change in the way the value of the ORR's funding is determined when this power comes into effect. The total value of funding for all railway functions will still be agreed with HMT, independent of other parties (including those who will be paying) during each spending review exercise. The ORR will then determine the split between its safety/non-safety rail functions through its own business planning and budgeting exercise. Only the mechanism by which the ORR administers and levies the fee will change (moving from a power derived from licence to one in statute).

Justification for the procedure

133. This power gives the ORR the ability to issue a levy on GBR via a notice. This is proportionate and in keeping with similar precedent, such as the fee that the ORR levies on HS1 in order to cover the costs of its regulatory activities in relation to that railway, which also does not involve Parliamentary scrutiny. Given the amount is agreed between HMT and an independent regulator, and has never proven controversial before, we think it is unlikely that these provisions would be controversial in future.

Clause 15: Requirement for the Secretary of State to prepare and publish a long-term rail strategy

Power conferred on the Secretary of State.

Power exercised by Secretary of State publishing a long-term rail strategy.

Parliamentary Procedure: none.

Context and Purpose

134. Given GBR will be responsible for making the operational decisions for the public railway, including for the tracks, stations, depots, and for those that use them, there is a need for Government to set out the long-term outcomes it wishes GBR to achieve.

135. The Long-Term Rail Strategy (LTRS) will be the means by which Government will set out the long-term trends that it will expect GBR to take into account when designing and developing its long-term business plans. It is also the means by which Government can indicate where GBR should focus its resources to maximise delivery of the widest socio-economic benefits possible over the long term.

Justification for taking the power

136. GBR and the wider rail industry will lack clear direction without a means to ensure ministerial and wider Government priorities are understood and articulated. This creates a risk that decisions are made to address short term issues or problems at the expense of long-term planning and investment and over time this reduces clarity and certainty for stakeholders, such as Mayoral Strategic Authorities or the industry supply chain.

137. Without setting a requirement in legislation there is a risk that GBR may not take into account ministerial views appropriately in the future or that Ministers fail to set out clear and consistent outcomes for the railways to reflect technological, environmental or societal changes.

Justification for the procedure

138. This is a new requirement and therefore needs to be set out in statute. There are several examples of strategies in legislation, such as section 5 of the Railways Act 2005 which gives Scottish Ministers the power to publish a rail strategy. Section 142 of the Greater London Authority Act 1999 contains a duty on the Mayor of London to produce a transport strategy. These strategies are also non-legislative, and we understand general best practice for strategy documents is that they should be non-legislative, indicative of the Government's policy and goals, and able to flex to current affairs and events.

Clause 17: Requirement for the Secretary of State to publish a freight growth target

Power conferred on the Secretary of State.
Power exercised by Secretary of State publishing a freight growth target.
Parliamentary Procedure: none.

Context and Purpose

139. Government policy is to support growth in the volume of goods (freight) moved by rail due to the benefits to the UK economy and the environment and its importance to the country's resilience. The purpose of the rail freight growth target is to indicate the Government's ambition for rail freight growth. As with the Long-Term Rail Strategy, GBR will be expected to take into account the rail freight growth target when it exercises its statutory functions and when developing its business plans.

Justification for taking the power

140. When GBR is making decisions on, for example, access to the network or closures of lines for scheduled maintenance, it is important that it takes decisions fairly, according to the best use of the network as assessed by considering its duties in the Bill. The Government's overall policy is to grow rail freight and to enable the wider benefits it brings to the economy. Therefore, in addition to the duty in the Bill which refers to promoting rail freight, the requirement for GBR to have regard to the freight growth target adds an additional safeguard to ensure that the Government's overall policy will be recognised by GBR.

141. The growth target cannot be set in legislation because there needs to be flexibility if circumstances change over time. There is no requirement for GBR to meet the target, but it must take the target into account when exercising its functions.

Justification for the procedure

142. There is no Parliamentary procedure associated with this power. This is aligned with precedents for similar powers, for example, in section 41(9) of the Greater London Authority Act 1999 there is a power for the Mayor to set targets (and there is no Parliamentary procedure associated).

Clauses 25, 26 & 27: Power for the Secretary of State, Scottish and Welsh Ministers to designate railway passenger services that they can provide or secure the provision for.

Power conferred on the Secretary of State, Scottish and Welsh Ministers.
Power exercised by Secretary of State publishing a designation document.
Parliamentary Procedure: none.

Context and Purpose

143. "Designation of services" is the mechanism that allows the delineation of responsibilities for passenger services between relevant authorities (e.g. the Secretary of State, Scottish Government and Welsh Government). The Secretary of State, Scottish Ministers and Welsh Ministers each have designation powers to set the bounds of services that they can secure through GBR (for the Secretary of State) or they themselves can provide or secure through a public sector company – e.g. GBR, Scotrail, or Transport for Wales (for Scottish and Welsh Ministers respectively). Ministers can exempt services from these designations so these can be devolved to other authorities, such as Transport for London (see paragraph 32). Designation also switches on relevant powers and requirements in relation to those services, such as the discount fare scheme requirements in section 34.

144. The GBR designation is expected to be succinct and will not provide route- nor timetable-level detail. Designation in this manner will ensure GBR has sufficient flexibility to act as a directing mind and plan best use of the network in the public interest and in accordance with its duties.

<u>Justification for taking the power</u>

145. This power broadly replicates section 23 of the Railways Act 1993, which enabled the Secretary of State for Transport, Scottish and Welsh Ministers to designate their relevant passenger services accordingly. The wording of section 23 of the 1993 Act was originally based on the old franchising system for passenger services, and although this was adapted to an extent by the Passenger Railway Services (Public Ownership) Act 2024, it is now appropriate to replace the whole section via this Bill with wording that is better suited to the public ownership model for passenger services.

Justification for the procedure

146. Because the designation replicates the process set out in section 23 of the 1993 Act and is both uncontroversial and high-level in nature, publication by the Secretary of State is a sufficient and appropriate exercise of the power.

ORR appeal practice and procedures document – clause 68(8)

Power conferred on the Office of Rail and Road.

Power exercised by ORR issuing its practice and procedures on appeals document.

Parliamentary Procedure: none.

147. This power will allow the ORR to set out its own practice and procedures for dealing with industry appeals against GBR's Access and Use Policy, its Infrastructure Capacity Plan, and its Performance Scheme and Charging Scheme; for appeals against specific decisions made under those documents; and for appeals relating to applications for inclusion in the working timetable.

148. The Bill provides for the ORR to hear appeals on a "judicial review" basis, applying the principles that would be applied by the High Court or the Court of Session, as appropriate.

Justification for taking the power

149. The ORR is best placed to flexibly design proportionate practice and procedures for its appeals that best meet the needs of industry and allow it to conduct the role it has been given in the Bill transparently and efficiently. The Government therefore considers it appropriate and necessary for the ORR to issue this document in the first instance.

150. Should more formal or complex practice and procedural rules be required, including the setting of fees, the Secretary of State may make regulations using the power in clause 68(6).

Justification for the procedure

151. This approach is justified as it is common for appeals bodies to publish documentation explaining their approach, procedure and intentions, and because the document issued by the ORR will be complemented by regulations issued by the Secretary of State for any aspects of the procedure

which require additional transparency and scrutiny, for example, if application fees were to be set.

Schedule 1: Power for Secretary of State to issue and modify GBR's licence

Power conferred on the Secretary of State.

Power exercised by Secretary of State publishing GBR's licence.

Parliamentary Procedure: none.

Context and Purpose

152. The Bill makes amendments to Part 1 of the Railways Act 1993 to facilitate the licensing of GBR. The Bill broadly replicates the Secretary of State's existing power to issue a licence to Network Rail and others (for example, train operators such as Southeastern), however, there are some distinctions. Please note that currently, the ORR also has a power to issue a licence to Network Rail and other rail bodies. In this Bill, however, we have changed the system so that only the Secretary of State has the power to grant a licence to GBR. This reflects the change to the new railway model: previously, when most railway companies were private entities, having an independent, impartial, and consistent regulator able to modify licences gave confidence to investors and markets. However, this context is not consistent with the new GBR model, noting GBR will operate in the public interest and will be democratically accountable to the Secretary of State (and to Scottish Ministers as network funders).

153. There is also a second power in the Bill which allows the Secretary of State to amend the conditions of GBR's licence. It specifies the steps the Secretary of State must take prior to modifying the licence. The Secretary of State must give notice at least 28 days before issuing or making modifications to the licence for interested parties to make representations or objections to the proposed content or modifications. The Secretary of State will not need to obtain GBR's consent to make any changes. The ORR will also be able to amend GBR's licence with the consent of GBR.

154. The ORR will retain its existing powers to issue and manage licences for non-GBR rail bodies consistent with its independent role. This includes licensing for freight operators, open access passenger operators, devolved

passenger operators, non-passenger operators (e.g. rail maintenance operators) and any network, depot and station operators outside of GBR.

Justification for taking the power

155. Although the Secretary of State could issue the licence under current legislation, there needs to be a clear line of accountability between GBR and the Secretary of State. The Government therefore considers it appropriate and necessary for the Secretary of State to issue GBR's licence and to restrict this power to the Secretary of State alone. The Bill will also give the Secretary of State the power to amend GBR's licence. The current licensing arrangements for non-GBR operators, and the ORR's role in enforcing all licences, will remain.

Justification for the procedure

156. Existing powers to issue and amend licences under sections 8 and 12 of the Railways Act 1993 are not subject to parliamentary scrutiny. The department does not consider that this approach needs to change. The process for issuing and amending GBR's licence will ensure the appropriate level of transparency by requiring the Secretary of State to communicate publicly their intent to issue and modify the licence and specify the reasons. It will also allow interested parties to opine through a broad public consultation. In line with the statutory process, the Government will consult on a draft GBR licence ahead of GBR becoming operational.

Schedule 1, paragraph 5: Power for Secretary of State to set licence conditions in relation to GBR's provision of industry services, including ticket retailing industry management

Power conferred on the Secretary of State.

Power exercised by Secretary of State publishing GBR's licence and approving an incorporated 'code of practice' (to be made and updated by the ORR).

Parliamentary Procedure: none.

Context and Purpose

157. As part of the Secretary of State's powers to grant GBR its licence, the Secretary of State will be able to approve documents prepared by the ORR,

and to make compliance with these documents a condition of GBR's licence. This power can be used to govern GBR's behaviour in relation to ticket retailing and to other GBR functions that are currently performed by the Rail Delivery Group on behalf of industry. This power will be implemented through inserting new section 9A into the 1993 Act.

158. The expectation is that this power will be exercised by the Secretary of State (and the ORR) to deliver a retail industry 'code of practice'. This code of practice is intended to ensure that GBR is behaving fairly towards other retailers, and that its interactions with those retailers are closely governed and monitored by the ORR. This oversight is intended to manage any unfairness that could otherwise arise from GBR's dual role as a retailer (seller of tickets) and as the retail industry manager. The retail industry management function includes the granting of contractual licences to third party retailers, setting commission rates and providing access to industry systems.

159. The ORR will have a duty to publish any documents approved using this power and to keep them up to date. The ORR will take a consultative approach in both producing and updating these documents, and the Secretary of State's approval will be necessary for any revisions to them.

160.

Justification for taking the power

161. This power is essential so that the Secretary of State and the ORR can ensure that GBR is required to comply with conditions set by the ORR in relation to its provision of cross-industry functions, notably those relating to the retail market. The statutory licensing framework is the appropriate mechanism for setting conditions around GBR's delivery of industry management functions. Given the ORR has existing functions to monitor compliance with licence conditions and to enforce in cases of non-compliance, the ORR will be well-placed to oversee GBR's conduct and decision-making in the relevant markets (including ticket retailing).

Justification for the procedure

162. As set out above, existing powers to issue and amend the licence under sections 8 and 12 of the Railways Act 1993 are not subject to Parliamentary scrutiny and the department does not consider that this

approach needs to change. As with the rest of GBR's licence, the process for issuing and amending any code of practice will ensure the appropriate level of transparency, industry expertise and stakeholder engagement.

PART C – DE-HYBRIDISING PROVISIONS

163. As detailed under the relevant powers above, the Bill contains two de-hybridising provisions. One of these applies to a substantive policy provision and the other applies to a standard consequential and transitional power.

Clause 72

164. Clause 72 of the Bill provides for the Secretary of State to make regulations about non-GBR infrastructure, facilities and services. This power will affect private companies, such as other infrastructure managers, who are bound by the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016s and other legislation concerning the access to Britain's railway networks. While these regulations are being disapplied for GBR, they will continue to apply to other infrastructure managers, such as HS1 Ltd, and the power allows the Secretary of State to amend these access regulations.

165. This power was consulted on as part of the public consultation for the Bill and received broad support, including from other infrastructure managers. In addition, the power is subject to statutory consultation requirements, which will be exercised in the manner considered appropriate for the proposed changes.

166. Given these considerations, the Government is satisfied that these organisations will be subject to similar protections to those that would normally be afforded by the hybrid procedure

Clause 88

167. Clause 88 is a standard power for the Secretary of State to make consequential amendment, and as set out in clause 89, this power can also be used to make supplementary, incidental, transitional, and saving provisions.

168. The transition to the new rail system will inevitably impact private companies, for example, private operators, rolling stock companies and the supply chain. The Bill's Impact Assessment, which has been rated green by the Regulatory Policy Committee, details the expected familiarisation and administration costs for these companies, and concludes that compared to the scale of rail sector they are likely to be minimal (around £2.5 million for businesses). As Parliament will have already approved the reforms by passing the Bill and scrutinising the Impact Assessment, the Government judges that the hybrid procedure is unnecessary for this power, as the transition is consequential to the wider reforms made under the Bill.

Department for Transport

5 November 2025