Final stage impact assessment

Title:	The Passenger Railway Services (Public Ownership) Bill
Type of measure:	Primary legislation
Department or agency:	Department for Transport
IA number:	…
RPC reference number:	…
Contact for enquiries:	matt.tyler@dft.gov.uk
Date:	26 September 2024

1. Summary of proposal

Primary legislation to allow the Secretary of State, Scottish Ministers and Welsh Ministers to award rail contracts to a public sector operator without first having sought to award to a private operator, and to remove their existing general powers to award franchises to private-sector operators. Section 4 provides further detail on the specific legislative changes.

2. Strategic case for proposed regulation

The Government was elected with a Manifesto commitment to bring rail services back into public ownership as contracts with existing operators expire or are broken through a failure to deliver. Bringing rail services back into public ownership is one element of a broader plan for the railways, which will also create a unified and simplified governance structure that places passengers at the heart of the mission, objectives and incentives for the railway. The rationale for this approach was set out in *Getting Britain Moving: Labour's Plan to Fix Britain's Railways*, which identified a deepening crisis in Britain's railways. This plan intends to address failings such as poor reliability and punctuality and overcrowding, and the consequential impacts of poor services on people's everyday lives and on businesses.

Improving the quality, efficiency and affordability of passenger rail transport would support the Government's priority missions to boost economic growth and break down barriers to opportunity, for example by allowing people to access employment, education, retail, leisure and public services, and by better connecting businesses to their suppliers and customers.

The Government's broader plan for reforming the railways includes establishing a new, arm's length public body – Great British Railways – which will be a 'directing mind' in charge of Britain's railway infrastructure and services. The King's Speech on 17 July 2024 confirmed the Government's intention to bring forward further, more extensive primary legislation to address the wider issues as part of its legislative programme for this parliamentary session. In the meantime, the purpose of the Passenger Railway Services (Public Ownership) Bill is specifically to facilitate the transfer of train operations back into public ownership, in advance of that more extensive legislation. In doing so, it provides an opportunity to unlock early benefits from reduced fee payments to private operators, the ability to take integrated decisions and align operator behaviour with government and passenger objectives. It is a key enabler of the Government's wider plan to fix Britain's Railways.

Change to primary legislation is needed because the Railways Act 1993 ("the 1993 Act"), was designed to facilitate the privatisation of British Rail in the 1990s and establishes a presumption in favour of private-sector operation of passenger services. It includes provision for the Secretary of State, Scottish Ministers and Welsh Ministers (referred to as the "appropriate franchising authority" in the 1993 Act) to secure services from a public-sector operator (commonly referred to as an "operator of last resort"), but only in circumstances where it is not possible or inappropriate to appoint a private sector operator. The 1993 Act also requires the appropriate franchising authority, following appropriate consultation, to publish a statement of policy setting out the circumstances in which franchises would be competed or awarded by other means. The current statements of policy reinforce the presumption in favour of franchising to the private sector (by competition where feasible and appropriate, or by means of a direct award to an operator otherwise). The current legislative framework is therefore inconsistent with the Government's commitment to bring train operations back into public ownership as existing contracts end and create a unified directing mind for the railway: Great British Railways..

Context: Scotland and Wales. The powers in the 1993 Act rest with the Secretary of State in respect of England-only and cross-border services; the Scottish Ministers and Welsh Ministers have similar powers in respect of services operating within Scotland and Wales. Scottish Ministers also have powers in relation to cross-border services. In general, the Bill amends the powers of the Scottish Ministers and Welsh Ministers in the same way as for the Secretary of State (although, unlike the Scottish and Welsh Ministers, the Secretary of State retains a power to extend existing franchise agreements or award new franchise agreements to incumbent private-sector operators in limited circumstances). However, all rail services procured by the Scottish and Welsh Ministers are currently operated by public sector operators under "operator of last resort" arrangements. As such, this impact assessment focuses on the effects of the Bill in relation to services procured by the Secretary of State, as this is where public ownership would represent a change to the *status quo*.

3. SMART Objectives for Intervention

The immediate intended outcome of the Bill is to support the Government's policy to bring rail operations back into public ownership as contracts expire, as a first step towards delivering a much broader programme of rail reforms. The most immediate and direct objectives for public ownership are:

i. Reducing industry fragmentation and avoiding the costs of franchising: Public sector operation of services will reduce the costs involved with operating the railways, including through the fees paid to train operators (which can be subsequently paid out as dividends to their owning groups as shareholders) and the transaction costs involved in negotiating or bidding for contracts. In addition, a public sector operator presents an opportunity to achieve economies of scale;

ii. Flexibility and ability to deliver wider government plans: Rail contracts sit within a broader programme of rail industry reform. Public ownership supports the delivery of this, by removing the commercial barriers and misalignment of incentives that would tend to militate against implementation of structural reforms and improvements to the passenger offer in contracts with private-sector operators. It will also enable Great British Railways, once established, to take more integrated decisions over track and train which will lead to better outcomes for customers and taxpayers.

Achieving these objectives can be expected to contribute to the wider objectives that were set out in *Getting Britain Moving* as the key objectives for public ownership and the wider programme of reform, which are as follows. Although specific quantified targets for each objective have not been set, progress against each of them is measurable by reference to indicators such as those identified in brackets in each case:

iii. Reliability (which can be assessed by reference to various indicators of operational performance which are collected and published across the rail industry as a matter of routine);
iv. Affordability (which from farepayers' perspective can be assessed by reference to statistics about fares levels published by the Office of Rail and Road, and from taxpayers' perspective by reference to the value of operational subsidy provided, and any management fees paid, to train operators);
v. Efficiency (which from a financial efficiency perspective can be assessed by reference to measures of cost normalised relative to total number of journeys or total passenger miles travelled; and from passengers' perspective can be assessed by reference to survey measures of satisfaction with the ease of use of rail services – work is in hand across the industry to develop proposals for new survey measures to replace the National Rail Passenger Survey);
vi. Quality (which is assessed under service quality regimes provided for in existing National Rail Contracts with private-sector operators and Service Contracts with public-sector operators);
vii. Accessibility (which can be assessed through research published by the Office of Road and Rail into passengers' experiences of accessibility and assisted travel services, and other data that operators are required to collect as part of their Accessible Travel Policies, as well as cross-industry records of physical station accessibility); and
viii. Safety (which can be assessed through British Transport Police crime statistics and reported numbers of accidents and near misses).

The ultimate outcome sought from this Bill, and from the wider programme of reforms that public ownership will facilitate, is to improve rail services and thereby support the Government's wider **missions** to kickstart economic growth and to break down barriers to opportunity.

The "theory of change" set out in section 4 below indicates the key routes through which the Government expects that public ownership, enabled by the Bill, will contribute to improvements against each of the objectives described above. It illustrates that objectives (i) and (ii) above are the key mechanisms through which the Bill helps to achieve the broader objectives (iii) to (viii).

The objectives described above are not specifically time-bound. The Government expects to make early progress in delivering improvements in these areas as quickly as possible. Assessing the longer-term impact of a significant structural reform includingtransferring passenger service operations into public ownership, and taking account of the likely timeframes involved in transferring services, it would be reasonable to assess impacts over the course of a five-year Parliament. Timing of benefits will depend on the pace at which the legislation and subsequent transfers to the public sector proceed, so the some of the intended "end-state" benefits may be continuing to accumulate after that five-year period.

4. Proposed Intervention and Logical Change Process

The proposed intervention is a Bill to amend the legislation under which the Secretary of State, Scottish Ministers and Welsh Ministers secure the provision of designated (see below) rail passenger services. Specifically, it would:

- prohibit the Secretary of State, Scottish and Welsh Ministers from entering into new franchise agreements, other than via the specific residual power for the Secretary of State mentioned below,

- amend the purpose for which services are designated by the Secretary of State, Scottish and Welsh Ministers under the Railways Act 1993, to avoid the presumption that they "ought to be provided under franchise agreements",

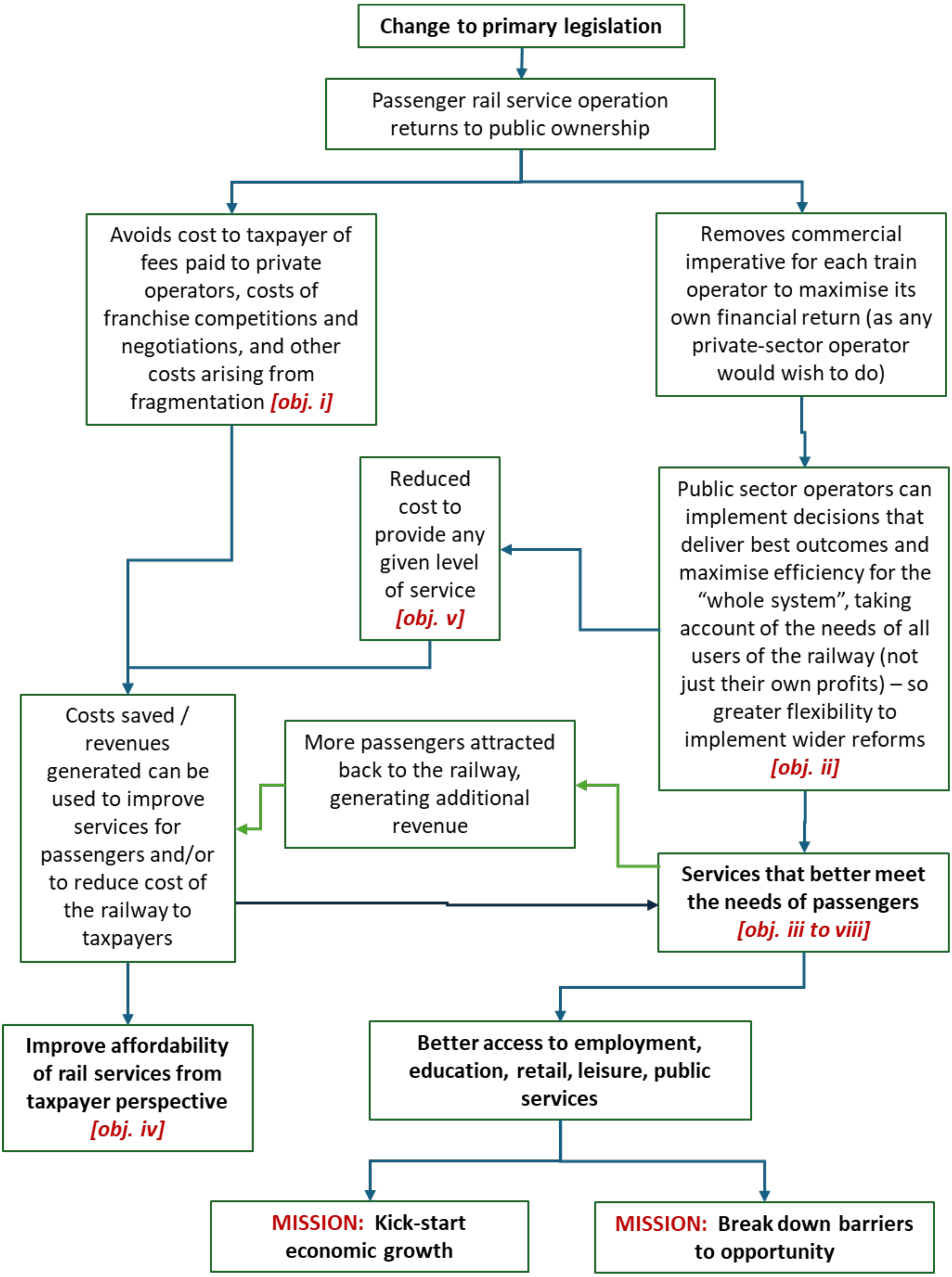
- repeal the current powers of the Secretary of State, Scottish Ministers and Welsh Ministers to run franchise competitions, the associated obligation to publish a statement of policy about how those powers will be exercised, and related provisions dealing with a situation where no adequate tenders are received,

- limit the powers of the Secretary of State, Scottish Ministers and Welsh Ministers to secure provision of railway passenger services in the absence of a franchise agreement so that this can be achieved only by direct award to a public sector operator (except where the residual power described below applies),

- retain a residual power for the Secretary of State to continue an existing private-sector franchise or grant a new franchise agreement directly to the incumbent private-sector operator, in effect as a "last resort" in the event that a planned transfer to a public-sector operator needs to be deferred on grounds of practicability,

- disapply the procurement law requirement for the Secretary of State, Scottish Ministers and Welsh Ministers to publish notice at least twelve months before they appoint a public sector operator.

Taken together, these changes would enable the Secretary of State to transfer passenger railway service operations into public ownership when existing contracts end, without first seeking to secure a replacement private-sector contract either by competition or by negotiation with the incumbent operator. Transferring operations to public ownership is expected to deliver benefits through a number of routes, as indicated in the 'theory of change' diagram below. The diagram includes references to the numbered objectives (i) to (viii) as described in section 3, to illustrate how the proposed change is expected to help to achieve those objectives.



References in red are to numbered objectives, and to "missions", as described in section 3 above.

The exact timeframe for bringing individual train operators' services into public ownership has yet to be finalised, but the design of this programme will need to take account of:

- the expiry dates of the ten existing National Rail Contracts. Two of these contracts have fixed expiry dates, but most have flexible arrangements will allow the Secretary of State to give three railway reporting periods' (usually twelve weeks') notice of the date on which the contract will expire. In each case this is subject to a minimum "core term" and a specified date on which the contract will expire if the Secretary of State does not give notice of an earlier expiry date. The core term expiry dates for the existing contracts are spread over the period from September 2024 to October 2027;

- the capacity of the public sector to take over the operation of more services while mitigating risk of disruption to services or loss of taxpayer value during the transition. Transferring services into public operation is a complex exercise. Based on experience of previous transfers, it is envisaged that aiming to transfer one operator's services every few months should be achievable while mitigating the risks involved. Experience of the early and previous transfers will inform decisions about timing.

5. Summary of long-list and alternatives

The Bill has been prepared to enable swift delivery of a Government manifesto commitment. As such, it has not been practicable for the Department to undertake the usual long-listing process. Instead, section 6 below describes and assesses the "do minimum" option, the preferred option and an alternative "do something" option.

Other options that, in principle, might have featured in a longlisting exercise include alternative commercial models that retain private-sector operation of passenger services. Different alternative models could have involved a greater degree of financial risk transfer to the private operators than current National Rail Contracts. Pre-COVID franchise agreements transferred most cost risk, and varying but generally substantial levels of revenue risk, to the private operators. Concession agreements such as those awarded by Transport for London transfer most cost risk to the private operator while retaining most or all revenue risk within the procuring authority. These options are not pursued in the shortlist in section 6, because they fundamentally fail to move towards the core objectives the Government seeks to achieve – avoiding the fragmentation and costs associated with the franchising system; unlocking flexibility to delivery wider reform plans, including integrating both "track" and "train" within a single publicly-owned body, Great British Railways; and avoiding future payment of fees to private-sector operators. Non-regulatory options, such as using existing contracts to drive greater cross-industry collaboration, were not pursued for similar reasons.

6. Shortlisted Options

As mentioned in section 5 above, this impact assessment focuses on a relatively small number of options, given that the Government's manifesto sets a clear direction of travel. The options assessed in this impact assessment are:

OPTION 1 (do minimum): a continuation of the existing contracting model, i.e. continue to award national rail contracts to private-sector operators. Under these contracts, most financial risk is borne by the public sector: government reimburses the operators' legitimate costs in operating passenger services, receives the revenues and pays a management fee to the operator which is their only opportunity to earn a profit. To date, national rail contracts have been awarded directly to incumbent operators and for simplicity the analysis assumes that this would continue to be the case. It is conceivable that national rail contracts could be competed in future, but it is assumed for the purposes of this impact assessment that doing so would not materially change the overall value of fees paid to the private sector given the balance of risk and reward to the private sector.

OPTION 2 (do something – await establishment of GBR – not preferred): as mentioned above, the King's Speech set out plans for a comprehensive Railways Bill to implement substantial reforms to the sector, including the establishment of Great British Railways as a single 'directing mind' for the railway. Public ownership (and therefore the benefits envisaged in the 'theory of change' in section 4) could be achieved by that Bill including the necessary legislative changes to allow rail services to transfer to Great British Railways. In this option, services would remain in private-sector operation until legislation has been enacted and Great British Railways is up and running. At that point, responsibility for services could be integrated within Great British Railways alongside responsibility for the infrastructure; it is assumed that responsibility for services would transition away from the private sector gradually over the course of two to three years to ensure smooth transitions. The quantified analysis described in the Evidence Base makes a reasonable assumption about the potential timing of these transfers, but for reasons of commercial sensitivity for the affected private-sector operators we are not setting out those assumptions in this impact assessment.

OPTION 3 (do something – bring forward early legislation to allow services to transfer to the public sector in advance of the wider legislation – Government policy): in this option, separate legislation is brought forward at the earliest opportunity, specifically to enable services to begin to transfer to the public sector in advance of the wider legislation and the establishment of GBR. The existing "operator of last resort" arrangements, whereby services are operated by a publicly-owned company, will be expanded for this purpose. Once the wider legislation is in place, it is anticipated that responsibility for 'track' and 'train' would then be integrated within Great British Railways. As with option 2, the quantified analysis described in the Evidence Base makes reasonable assumptions about the timing of transfers, but no decisions have yet been taken and for reasons of commercial sensitivity these assumptions are not set out here.

Option 1 fails to address the strategic case set out in section 2. The Government's assessment is that substantial reform is required to address the complex challenges facing the railway, and thereby to improve services for passengers and improve affordability and value for money for the taxpayer. Continuing with National Rail Contracts (or other commercial models with private-sector operation) is fundamentally at odds with the Government's plan to bring management of "track" and "train" together in a single publicly-owned organisation. Of itself, this approach would make no new progress towards the achievement of the objectives identified in section 3.

Option 2 is consistent with the strategic case in the longer term as it would see services transferred into public ownership, so achieving benefits through the 'theory of change' identified in section 4. It would also achieve the further benefits intended from the broader reform programme, including through integration of track and train. However, this option would not achieve the intended benefits of public ownership as quickly as possible: there would be capacity within the public sector to operate more services in advance of the planned establishment of Great British Railways if the legislative framework allowed it.

Option 3 is also consistent with the strategic case, for the same reasons. However, this option is assessed as being superior to option 2 because:

- it enables the benefits of public ownership set out in the 'theory of change' diagram in section 4 to start to be achieved sooner; and

- early transfer of operations into the public sector will simplify and accelerate their subsequent transfer into GBR, meaning that the further benefits of establishing GBR as a directing mind for the railway, reducing fragmentation and integrating track and train, can be achieved more quickly.

In summary, this is why **Option 3** is the preferred option that the Government is taking forward by introducing the Passenger Railway Services (Public Ownership) Bill at the very start of the new Parliamentary session.

7. Regulatory scorecard for preferred option

Part A: Overall and stakeholder impacts

(1) Overall impacts on total welfare		**Directional rating**
Overall expected impact	There are several channels through which public ownership is likely to increase total welfare. Firstly, there will be significant savings to government. This includes reduced fee payments to operators, which has been monetised. In addition, there will be further savings from reduced administration costs (for example, from reduced costs associated with managing commercial contracts and administering competitions). Secondly, public ownership also presents an opportunity to improve passenger rail services. Ahead of wider reforms by removing the commercially-driven focus on individual operators' profit, it increases scope for decisions to be made with reference to optimising for the whole rail system, rather than individual commercial interests. There may be additional benefits from economies of scale. Lastly, public ownership means that once Great British Railways is established most operators will already be in public ownership, meaning they can transfer more rapidly into GBR and so the benefits of further integration can be	**Positive**

	achieved sooner. This impact assessment focusses on public ownership specifically, and therefore does not monetise the benefits of the wider reform programme. There are also arguments as to why private operators could be effective in delivering better outcomes and financial performance - e.g. because franchise competitions drive innovation and efficiency, or because the profit motive has a positive incentive effect. However, it has been difficult to evidence these effects in practice, particularly since government took over financial risk for franchises at the start of the COVID pandemic. Overall, therefore, the expected impact is likely to be positive for the reasons outlined above, in line with the case set out in the Government's manifesto. While there are potential, non-monetised costs of public ownership, our judgement is that these can be avoided by the design and delivery of Great British Railways.	
Monetised impacts	There are two monetised impacts for government: mobilisation costs for the public operator, and reduced fee payments. This produces a significant net saving to taxpayer. With a 10-year appraisal period starting in 2024, the estimated net present social value based on monetised impacts is £737m (2024 present value), within a range of £821m to £653m.	**Positive**
Non-monetised impacts	Non-monetised benefits of public ownership can include: • benefits to passengers as a result of public operators taking decisions considering wider objectives, rather than solely on commercial viability; • savings for government, in so far as public-sector operation enables decisions that promote better efficiency across the whole system (whether savings are achieved by train operators or by Network Rail as the operator of the railway infrastructure); • savings for government and operators in terms of avoiding costs of negotiations or competitions leading to contract award, and subsequent costs of negotiating the commercial consequences of changes in required outputs after contracts have been awarded. There is potential for these to be at least partially offset by the following costs: • loss of benefits from absence of competitive pressure driving private operators to innovate. • reduction in efficiency savings to government, in so far as incentivised private-sector operators might be expected to drive more effective cost management or revenue maximisation. However, we have not been able to identify any such benefits and any potential impacts in this area could be managed	

	through ensuring capability and effective oversight of DOHL (in the short term) and design of GBR (in the longer term). To the extent the preferred option leads to service improvements, there are potential indirect impacts from environmental benefits and reduced traffic congestion, in so far as service improvements encourage people to choose rail rather than other private cars or other more polluting modes	
Any significant or adverse distributional impacts?	None (other than those identified in section 2 below).	**Neutral**

(2) Expected impacts on businesses		
Description of overall business impact	The direct impact on businesses is on the train operators with existing contracts with Government, which will not be renewed once they end. This affects ten current train operating companies and the eight owning groups who hold shares in those train operating companies. Each of these eight owning groups have other transport interests in the UK and/or overseas, but for some the National Rail Contracts account for a substantial proportion of their overall business. The companies will lose the possibility of winning or being awarded future contracts and earning future profits under such contracts. The direct net cost to business arising from this will depend on how profitable rail contracts are. As discussed in the evidence base section, firms holding rail contracts receive income in the form of a fee but will also incur some costs and bear some limited element of financial risk as consequence of holding the contract. More widely, there will continue to need to be a vibrant private-sector supply chain providing goods and services to public-sector train operators. There is no negative impact expected on businesses in the supply chain – for example the wider supply chain or rolling stock companies. Looking at impacts on the broader business community, to the extent that train services improve under public ownership for the reasons suggested in the ‘theory of change’, then this would benefit a much larger population of businesses. Businesses are also likely to benefit to the extent that making early progress on public ownership accelerates delivery of the expected benefits of the wider reform programme. This positive impact cannot be quantified with any certainty, so the overall business impact is rated as ‘uncertain’. See also further discussion under “business environment” below.	**Uncertain**

Monetised impacts	We have produced an indicative estimate of familiarisation costs (£0.03m). Otherwise, business net present value, and the equivalent annual net direct cost to business are not monetised.	**Negative**
Non-monetised impacts	Compared to the "do minimum", there will be a negative impact to operators with a contract from being unable to earn further profits from holding rail contracts. This may be offset by positive indirect impacts on the wider business population if there are improvements to rail services under public operation, or if owning groups are able to diversify their business.	**Uncertain**
Any significant or adverse distributional impacts?	There is a significant adverse impact specifically on the ten train operating companies who currently run services under National Rail Contracts, and on their owning groups (and on any prospective new entrants to the market who might have sought to bid for future contracts in the event of a return to competitions instead of direct awards). No other groups are expected to be adversely affected.	**Negative**

(3) Expected impacts on households		
Description of overall household impact	No direct impact is expected on either households or individuals. There are potential benefits to passengers, to the extent that public ownership means operators take decisions with reference to wider objectives, rather than commercial viability, and through accelerating delivery of GBR.	**Positive**
Monetised impacts	None	**Neutral**
Non-monetised impacts	As discussed above, there are potential positive impacts.	**Positive**
Any significant or adverse distributional impacts?	To the extent that households are affected, these effects will primarily fall on those who use rail services (though others may also be affected by secondary effects such as any impact on road traffic congestion).	**Neutral**

Part B: Impacts on wider government priorities

Category	**Description of impact**	**Directional rating**

Business environment: **Does the measure impact on the ease of doing business in the UK?**	There is potential for a positive impact on the general business environment as a result of the Bill: to the extent that rail services improve under public ownership through the mechanisms described in section 4, these improvements would have a knock-on benefit for businesses who depend on the railway either directly (e.g. for staff travel or transport of goods) or indirectly (e.g. for customers to access their goods and services). Set against this, the impact on a small population of transport operating companies and their owning groups will be negative. There will be a loss of opportunity for businesses to run services under government contracts. Therefore, barriers to entry for operating passenger rail services are increased, although there remains scope for firms to bring innovative services to market as open access operators. There will also continue to need to be a very active private-sector supply chain providing services to the public sector operators. The overall impact on business will reflect a balance between the anticipated positive impact on the general business environment and the very specific negative impact on a small number of transport operators and their owning groups. Because the impact on the general business environment cannot be quantified with any certainty, the net impact is assessed here as "uncertain".	**Uncertain**
International Considerations: **Does the measure support international trade and investment?**	The measure may work against international trade specifically in the transport operations sector, in the sense that some overseas owning groups (whose business interests are wider than just the train operating companies directly affected) could choose to withdraw from the UK market. Private sector train operators and their owning groups do not invest their own capital under National Rail Contracts, so the preferred option is not expected to affect inward investment. If the preferred option leads to improved rail services, then this could be a positive factor that encourages international trade and investment, though of itself the quality of rail passenger services is unlikely to be a determining factor in international trade and investment decisions.	**Uncertain**
Natural capital and Decarbonisation: **Does the measure support commitments to improve the environment and decarbonise?**	No direct impacts are expected. There is potential for positive indirect impacts through a) service improvements under public ownership leading to modal shift to rail, and b) the government subsequently using the greater flexibility provided by public ownership alongside wider reforms to direct operators to prioritise decarbonisation. This is assessed as neutral as the effects are indirect and their size is unknown, but could be positive if significant.	**Neutral** **Positive if modal shift is significant**

8. Monitoring and evaluation of preferred option

The impact of the proposed changes will be evaluated as part of broader rail reform. Further work to scope additional evaluation activity, involving an evaluation scoping study to assess data requirements and explore impact evaluation methods for rail reform is ongoing. The impact assessment accompanying the forthcoming Railways Bill will provide an update.

In addition, the Department routinely monitors train operators' performance against a range of indicators as part of its ongoing contract management activities, which apply to both private- and public-sector operators. Performance statistics is also published regularly by the Office of Road and Rail (ORR).

9. Minimising administrative and compliance costs for preferred option

The policy does not create new administrative burdens for business. To the extent that private-sector operators of National Rail Contracts might face legitimate additional costs in preparing for their services to transfer to public ownership, those costs would be eligible for reimbursement by the Government in accordance with, and subject to, the existing terms of the National Rail Contracts. Private operators will need to wind down the relevant train operating companies once their contracts have expired, but this would also be needed in the 'do minimum' if their services transferred to a different operator following a future competition (albeit that this would have been at a later date).

In general, the administrative overhead costs (for both train operators and government) tend to be lower for contracts with public-sector train operators than their private-sector equivalents. This is because the incentives of a public-sector operator are generally better aligned with government's objectives, meaning less effort should be required to monitor and secure ongoing compliance or to negotiate the commercial implications of any desired changes in contract specification. Because of the need to protect the interests of taxpayers who directly fund the legitimate costs incurred by operators under National Rail Contracts, the burden of contract management has been heavier than for the franchise agreements that were in place before the COVID pandemic.

Declaration

Department:

Department for Transport

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Minister responsible:

Lord Hendy, Minister for Rail

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed:

Date: 26.09.2024

Summary: Analysis and evidence

Price base year: 2024

PV base year: 2024

	Do minimum	**Await Establishment of GBR**	**Bring Forward Early Legislation**
Net present social value (NPSV) Appraisal period is 10 years, starting in 2024/25.	Click or tap here to enter text.	The central estimate is £518m, with a range of £580m to £456m, reflecting quantified changes in public sector costs, relative to the do minimum.	The central estimate is £737m, with a range of £821m to £653m, reflecting quantified changes in public sector costs, relative to do minimum.
Public sector financial costs	The public sector would continue to make fee payments to operators.	The central estimate of net cost saving to the public sector is £518m, reflecting quantified changes in mobilisation cost and fees.	The central estimate of net cost saving to the public sector is £737m, reflecting quantified changes in mobilisation cost and fees.
Significant un-quantified benefits and costs	For costs, this primarily includes costs of administering contract award competitions. The impact on rail service provision is unclear.	For benefits, there are unquantified potential savings from economies of scale, and reduced contract management overheads. The impact on rail service provision is unclear.	For benefits, there are unquantified potential savings from economies of scale, and reduced contract management overheads. The impact on rail service provision is unclear.
Key risks	Key risks include risks of misaligned incentives with private operators.	Key risks include risks of public sector operators failing to deliver a better service.	Key risks include risks of public sector operators failing to deliver a better service.
Results of sensitivity analysis	Click or tap here to enter text.	No sensitivity tests undertaken.	No sensitivity tests undertaken.

Evidence Base

Rationale for Intervention

There are several economic factors relevant to rail contracts:

- Challenges of aligning the incentives of a privately-owned operator with government and passenger objectives. A misalignment of objectives would create a 'principal agent' problem, where the incentives and behaviour of the agent (the operator) conflict with those preferred by the principal (government). To address this risk, government can either monitor the actions of the operator closely and incur costs doing so; or incentivise the operator financially, and again incur costs – for example by linking the fee paid to the operator to revenue, or measures of customer satisfaction. There are several challenges inherent here, specifically to do with the risk of creating perverse incentives (for example, a strong revenue incentive would lead to revenue maximisation at the expense of passenger welfare or cost control).
- Challenges taking integrated decisions that optimise against government and passenger objectives when services are operated by separate, commercial entities. Public ownership provides an opportunity to address this 'coordination failure' and achieve better outcomes overall, in line with the wider shift to align 'track' and 'train'.
- The extent to which potential future competition for contracts would lead to improved outcomes, relative to the increased costs from private provision, such as the costs of administering bids or fee payments to operators.

Do Minimum

The do minimum option for this impact assessment is continued National Rail Contracts, with competitions as and when existing contracts expire. As discussed above, this is consistent with the current legislation.[1]

Sectors and Markets Affected

This change will primarily affect the rail passenger services sector. Subject to the eventual structure of the public operator, there may be impacts on the wider rail supply chain, as discussed in the section on 'small and micro business impacts'.

Policy Objective

As set out in Section 3, the government's overarching goals are for a railway system that is reliable, affordable, efficient, quality, accessible and safe. We have also identified the following further specific objectives: reducing industry fragmentation and avoiding the costs of franchising, and flexibility and ability to deliver wider government plans.

Options Considered

The options considered focus on method of service delivery only (i.e., public sector providers vs. private provision), as well as implementation (i.e., gradual transfer to public ownership or simultaneous transfer). Decisions about the scope – for example, the optimal

[1] Continued National Rail Contracts represent the closest available option to a business-as-usual scenario. Their continued use would be a significant undertaking – up and including running competitions – and therefore we have described them here as the 'do minimum'.

frequency of train services on routes, or funding – for example, the balance between farebox revenue and taxpayer funding – are outside the scope of this impact assessment.

Three shortlisted options were introduced in Section 6, and include:

1. **Do Minimum:** Continue Existing Contractual Model
2. **Do Something:** Await Establishment of GBR
3. **Preferred Option**: Bring Forward Early Legislation

International models for procurement of rail systems were reviewed extensively as part of the Williams Rail Review, with a summary being published in 2019. [2]

With respect to existing legislative and regulatory requirements, Options 1 is consistent with the current framework. Options 2 and 3 would require amendments to the Railways Act.

Preferred Option

The preferred option is to introduce early legislation, to enable services to begin to transfer to the public sector in advance of the wider legislation and the establishment of GBR.

In recent years several operators have been taken into public ownership, meaning there is a well-established process for transferring operators to public ownership, reducing risks to deliverability, though transferring substantial passenger service operations into public ownership is a substantial and complex endeavour which needs to be carefully managed.

Social Cost Benefit Analysis

This section summarises the social costs and benefits for the preferred option, against the counterfactual of the do minimum. Unless stated otherwise, all costs and benefits are ongoing.

Government

Monetised Costs

Transition and Mobilisation Costs: When services transfer to a public-sector operator, the government will be liable for the public sector's costs of due diligence and mobilisation, as well as any costs legitimately incurred by the private-sector operator.

To monetise these costs, the Department's internal assumptions – informed by experience with previous mobilisations – were used. These costs were assumed to grow in line with the GDP deflator (i.e., no real terms cost increase).

Monetised Benefits

Savings on Fee Payments: Following an operator's transfer to public ownership, government will no longer pay fees to the private operator. The level of fees payable depends on operator performance and therefore varies within the department's overall budget allocated to fees.

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[2] Department for Transport (2019): Current railway models: Great Britain and overseas, pg.3 https://assets.publishing.service.gov.uk/media/5cc3094c40f0b64032f1ef15/current-railway-models-great-britain-and-overseas-country-summaries.pdf

The design of the fee mechanism, which includes both fixed and performance-based elements is set out in each operator's contract, which are published on the Public Register of Rail Contracts.[3] The monetary value of elements of the fee is commercially sensitive information, and therefore not published. The Department has previously published details of fee payments under a previous set of contracts.[4] To provide a lower bound for net present social value, we assume all remaining private operators earn two thirds of their maximum possible fee. To provide an upper bound, we assume that all remaining private operators would have earnt the maximum fee possible. Our central estimate takes an average of the two.

Non-Monetised Benefits

Savings on Competition Administration Costs: In the do minimum, the government would need to administer competitions to act consistently with the 1993 Act. These would not be required under the preferred option, resulting in a cost saving. This has not been quantified due to uncertainty around timing and design of future competitions.

Savings on Contract Management Costs: To manage private operators effectively, and ensure incentives are aligned, there is a cost to government from the staff needed to monitor operators' performance and agree target benchmarks with operators. Under public ownership, it may be possible to align incentives more directly, and so reduce the scale of spend needed for this activity. This has not been quantified as the long-term organisational structure of Great British Railways is beyond the scope of this impact assessment. In addition, parent company oversight of private operators will be lost in the preferred option. To the extent this contributed to the performance of private operators, the need to replicate this would limit savings on government contract management costs.

Delivery of Rail Reform and wider government objectives: The preferred option supports wider government objectives, including delivery of rail reform and establishing Great British Railways. Implementing changes associated with the new industry model may be easier where operators are under public ownership. Commercial change negotiations would not be required under public ownership as they would under an NRC. This has not been quantified but could enable further benefits from reduced costs and wider benefits.

Savings on Operational Costs: The preferred option creates an opportunity to coordinate better between track and train, as well as achieve economies of scale across public operators, without the separation of operations into individual, commercial, entities being a barrier.

The size of the saving delivered here will depend on the balance of the following factors:

- The ability of competition to drive improved outcomes, such as innovative proposals from bidders, and ensure in-life that operators remain competitive and cost efficient.
- The ability of in-life incentives for private operators to drive improved outcomes.
- The strength of performance management of senior management of the public operator, as well as their motivations. The policy is intended to enable public sector operators to maximise value for money and enable broader reforms which could save money. That said, there is a risk that the senior management of state

[3] Public register of rail passenger contracts - GOV.UK (www.gov.uk)

[4] DfT payments to passenger rail operators under emergency agreements and National Rail contracts - GOV.UK (www.gov.uk)

companies may not internalise the cost and revenue impacts of their actions. This could lead to misallocation of resource, leading to inefficiency. The approach to performance management taken by the public operator, and the motivations of its management will therefore shape the impact of the preferred option.

As stated in the scorecard, our judgement is that any potential disbenefits of public ownership are not sufficient to change the overall impact or can be avoided by the design and delivery of Great British Railways.

Businesses
Monetised Costs

Familiarisation Costs:
Private operators, and their owning groups, will need to familiarise themselves with changes to legislation. In the absence of evidence from a consultation, we have made indicative assumptions.[5] [6] Given these assumptions, familiarisation costs would be c.£30,000 (2024/25 prices).

Operators will be familiar with the process involving in transfers of ownership from previous situations when franchises expired.

Non-Monetised Costs

Lost Profits from Rail Contracts:
Under the preferred option, businesses lose the ability to compete for rail contracts, and existing contracts may end sooner than they would in the do minimum. The direct net cost to business arising from this will depend on how profitable these contracts are in the do minimum. This will depend on the size of the following non-monetised costs, relative to fee income:

- Bid Costs: In the do minimum, when existing contracts expire, prospective private sector operators will need to prepare bids in response to specifications issued by the franchising authority, to provide evidence of their suitability and strengths.
- Cost of Parent Company Oversight: Under NRCs, owning groups are incentivised to monitor and support the operators they hold shares in, to maximise the fee payments received by those operators. As a result, owning groups may incur staff costs, for example. The level of cost incurred here is private information, and therefore is not monetised in this impact assessment. This cost is removed in the preferred option.
- Cost of Parent Company Guarantee: Under NRCs, operators' parent companies commit contractually to cover any unfunded liabilities of the operator that exceed the value of the fees they earned, and this commitment extends beyond the end of the contract (as it takes a significant amount of time to close down the final financial adjustments between government and operator after the contract ends). To the extent that owning groups will maintain cash on their balance sheet to cover these

[5] We have assumed 12 hours familiarisation time individually for a management team consisting of a chief executive or senior official, an HR manager or director, a legal professional, and a senior manager or professional. These are only expected to be relevant for private operators and their owning groups, rather than all companies operating the rail sector.
[6] To value the working time, median hourly earnings data from the provisional 2023 ONS Annual Survey of Hours and Earnings was used. These values were then uplifted by 17.9% to account for non-wage labour costs. Costs were uplifted in line with the average earnings forecast in OBR's March 2024 Economic and Fiscal Outlook.

potential liabilities, this would incur an opportunity cost – for example, because the money could not be invested into another area of their business. This cost is removed in the preferred option.

Non-Monetised Benefits

Improvements for Business Travellers: Businesses whose employees use rail during their working day could be affected, to the extent that the preferred option affects the quality or price of passenger services. This would be an indirect impact and cannot be robustly monetised.

Conclusion

As discussed above, there are significant monetised and non-monetised impacts that would arise from proceeding with the preferred option. Based on the monetised impacts alone, the preferred option has positive net present social value.

Turning to non-monetised impacts, of particular importance are non-monetised impacts relating to:

- The ability of the government to deliver wider policy objectives – and by extension for households to receive the benefits of these.
- The opportunity to take coordinated decisions across ‘track’ and ‘train’ operations, with a view to achieving better whole-system outcomes.
- Potential disbenefits from moving away from private ownership, and the extent to which the design and delivery of Great British Railways mitigates this.

These will be explored further in the impact assessment for future wider legislation.

Costs and Benefits for Business

As discussed above, impacts on businesses holding existing contracts are relatively limited. There is a more significant ongoing impact from the loss of future opportunities to hold rail contracts, which is a fundamental change to the scope of a market. Due to limited information about the profitability of rail contracts, we have not been able to estimate the equivalent annual net direct costs to business (EANDCB) of the preferred option.

There are also potential wider impacts on business, which are discussed in the wider impacts section.

Impact on small and micro businesses

The preferred option involves changes to the structure of a market, and therefore it is not possible to include any exemptions based on business size from the changes introduced under the preferred option.

All DfT-contracted operators exceed the 499-employee threshold for being considered medium sized businesses, when looking at full time equivalent employees.[7] These operators are subsidiaries of owning groups, which are private, commercial, entities, and as such we do not have information on their number of employees. However, due to the capital

[7] ORR, Table 2233 – Full-time equivalent (FTE) employees by operator, as of March 2023. (https://dataportal.orr.gov.uk/media/2224/table-2233-fte-employees-by-operator.ods)

requirements associated with entering a contract to operate passenger services, as well as the resource required to prepare a competitive bid, we would expect owning groups to be relatively large enterprises. Therefore, it is unlikely that the businesses affected by the preferred option would fall under the threshold for being a medium business (499 employees or fewer), and highly unlikely they would fall under the threshold for being a small or micro business (49 employees or fewer).

There is potential for the transfer of services to public ownership to affect the supply chain, but these effects will depend on future policy decisions around any changes to service specification under public ownership and also any change in the degree of priority that government requires operators to attach to supporting SMBs in bidding for supply contracts.

Costs and Benefits for Households

The options considered in this impact assessment are not expected to directly affect households. There are potential benefits to passengers – and by extension households – as a result of public operators taking decisions considering wider objectives, rather than solely on commercial viability.

Business Environment

There is potential for positive and negative impacts on the business environment. As a result for the scorecard, the impact was assessed as uncertain.

Improvements in the delivery of passenger services have potential to benefit businesses that depend on the railway directly (e.g. for staff travel or transport of goods) or indirectly (e.g. for customers to access their goods and services). Therefore, public ownership may enable greater business investment, improving the business environment.

On the other hand, the preferred option would remove opportunities for firms to bid for contracts to operate passenger services, creating barriers to entry. All else being equal, this could discourage international participation in UK public transport markets. However, the scope of the intervention is confined to contracts to operate passenger services for operators where the Secretary of State, Scottish or Welsh Ministers, are the appropriate franchising authority. Opportunities to bid for rail contracts with other public authorities would remain. The preferred option also does not affect the wider rail supply chain (for example, for rolling stock), or change the process by which new open access operators can enter the market.

Transferring more services into public ownership will increase market concentration. It is envisaged that, ahead of the proposed establishment of Great British Railways, services will continue to be operated by a number of separate train operators – as now, but in public ownership. In general, however, head-to-head competition between franchised operators is already quite limited, as most routes are served by a single operator.

Trade Implications

The preferred option would have the same impacts on UK businesses as non-UK businesses, and so does not involve any differential treatment that could be contrary to international obligations. However, some overseas owning groups might elect to withdraw from the UK rail or public transport markets altogether, while others might remain active in bidding for rail, light rail and bus contracts from other public authorities.

Environment: Natural capital impact and decarbonisation
No direct impacts are expected. In so far as service improvements encourage people to switch to rail over other modes (modal shift), there is potential for environmental benefits. It is also anticipated that public ownership should create an environment in which measures that deliver environmental benefits can be implemented more easily, as the commercial consequences of such measures would not need to be negotiated with a private-sector operator.

Other wider impacts
Open access operators, and the regulatory framework underpinning open access operators, are outside the scope of this legislation. Existing open access operators are typically members of owning groups that also hold contracts for at least one DfT-franchised operator. Owning groups are required to use separate resources to operate open access services, and therefore we do not expect any impacts from the transfer to public ownership on the viability of open access operators.

Risks and assumptions
The following assumptions underly the analysis discussed in this impact assessment:

- Existing contracts will only end after reaching a contractual deadline (i.e., the end of the contract's core term), and no contracts will be ended early for other reasons, for example breach of contract. The analysis in this impact assessment has used reasonable assumptions about the timing of transfers of ownership, but for obvious reasons of commercial and market sensitivity these assumptions are not disclosed in this impact assessment.
- When an operator moves into public ownership, its 'day to day' activities will remain largely unchanged, except where directly affected by a change of ownership (for example, if the owning group provided HR functions to the operator). This has been the case when previous private operators' services were taken over by the Operator of Last Resort. In the long term, the organisational structure and operation of Great British Railways may further reshape the delivery of passenger services, but that is beyond the scope of the Bill covered by this impact assessment.
- Operators' fees depend on their performance; as a result, forecasts are subject to uncertainty. Any payment of fee to a public-sector operator would be a transfer within the public sector.
- It is assumed that private operators' behaviour does not change following the passage of legislation in a way that affects performance or passenger experience. Without the prospect of future contracts, private operators may judge they have a weaker incentive to perform effectively or to engage constructively with the Department as contract manager, particularly if their contract is ending imminently, though the opportunity to earn performance-based fees until their contracts end ought to encourage them to maintain standards.