Written evidence submitted by Rail Freight Group (RFG) (RB06)

Public Bill Committee Call for Evidence – Railways Bill

Introduction

1. Rail Freight Group is pleased to provide evidence to the Public Bill Committee for the Railways Bill 2025.

2. RFG is the representative body for rail freight in the UK, and we campaign for a greater use of rail freight, to deliver environmental and economic benefits for the UK. We have over 130 member companies including train operators, end customers, ports and terminal operators, suppliers including locomotive and wagon companies and support services.

Overview

3. Rail reform, and the Railways Bill 2025 which enacts it, is of fundamental importance to the rail freight sector, and to its future prospects. We are grateful for the opportunity to present our concerns to the Committee as well as highlighting the areas which we believe support rail freight.

4. The Railways Bill enacts three things, it establishes GBR as an integrated operator, it creates the Passenger Watchdog and it replaces the legal framework by which non GBR operators can secure access to the GBR infrastructure and be charged for it. Broadly speaking the rail freight sector is pleased with the provisions for freight included in the framework for establishing GBR, but is concerned over the significant risks created by the changes to the access framework. We have no specific comments on the Passenger Watchdog.

5. To succeed and grow rail freight customers and operators will need to be assured that

    a. they can secure access to the network in a fair, consistent and timely way for their services, including those on new routes and to new destinations as they arise.
    b. that the costs of rail remain competitive when compared to road freight
    c. that the network remains reliable and fit for purpose for freight trains (for example, to handle heavy or high gauge container trains)
    d. that there is independent oversight and a right of appeal if freight is unfairly treated or disadvantaged.
    e. That they can invest in rail freight assets (wagons, terminals, locomotives etc) with the confidence that they will have a long term use of those assets.

6. The current provisions in the Bill provide some positive elements in support of these requirements, but also increase the risk in others. Overall, the Bill is not sufficient to

assure rail freight of the key points ahead as currently presented.

7. It is unfortunate that the detail of the new access framework is not available for scrutiny. We welcome the Network Rail discussion document and freight colleagues are involved in working groups, but there is no certainty yet over how new processes. This increases the concerns over the legal changes which delete in law the current framework, and means that Parliament cannot scrutinise the policy as a whole whilst considering the Bill provisions.

8. We are also concerned at the absence of a draft licence for GBR which could include important details on how GBR will be held to account or otherwise, and also in the structure of GBR's organisation and how the different business units will work together to support cross network freight operations.

9. We are particularly concerned over the new appeals process for ORR, which we believe is not adequate and presents a real risk for freight (see below). We note the ORR have consulted on these new powers, which we welcome, but note that they can only work within the powers granted to them in law, which we consider to be inadequate.

Positive Provisions for Rail Freight

10. The Bill makes several positive provisions for freight which we are pleased with. Clause 17 sets a requirement on the Secretary of State to set and publish a target to increase the use of the railway network for the carriage of goods, and requires GBR to have regard to it. We have seen the power of having a growth target in driving good behaviours towards freight, with the current target of 75% growth by 2050, which delivered 5.5% growth in its first year. As such we believe this is a powerful clause that will have a good bearing on GBR's approach to rail freight.

11. Clause 18(2)(b) sets a general duty on the Secretary of State and GBR to act 'in the manner best calculated to promote the use of the railway for the carriage of goods'. Other duties in this section include (c) to promote a high standard of performance (d) to enable persons .. to plan the future with a reasonable degree of assurance and (e)… in the public interest.. and these are also helpful for rail freight and we are pleased with their inclusion. We note however that these duties are suspended in the application of the Capacity Duty (Clause 63) which requires GBR to reserve capacity for its own services, and it is essential that this does not undermine the ability of GBR to deliver rail freight growth as anticipated by the duties.

12. Clause 64 (4) allows GBR to 'discount' track access charges that it considers to be appropriate. Although the ability to discount is already provided for in the current law, and Network Rail currently operate a scheme to support new freight services, the existing provisions are narrow, and this new clause opens up possibilities, e.g. to support a greater use of electric traction or the introduction of digital technology on wagons.

13. Clause 15 sets a requirement on the Secretary of State to prepare a long term strategy for the railways which we support. The clause would be strengthened by making specific reference to the need for the strategy to include rail freight (in accordance with the growth target):

Amendment: Add Clause 15 (1) (c) the development of the use of the network for the carriage of goods by rail.

Amendment: Require the Secretary of State to publish an annual report on the measures taken to promote the use of the network for the carriage of goods, and on progress against the growth target.

Principle Concerns

14. *Future Process for Allocating Capacity:* As outlined above the future process for allocating capacity and awarding 'capacity commitments' (contractual access rights) will be in GBRs Access and Use Policy (clause 59) which has not yet been published. We understand that the basis of the new approach will be via Infrastructure Capacity Plans (Clause 61) and the Capacity Duty (Clause 63). It is difficult from these clauses to have a clear understanding of the new process, how the two clauses interact and how rail freight growth will be facilitated, including in contractual rights for operators.

15. In our discussions with officials, they are clear that Clause 63 is subservient to Clause 61 – i.e. the allocation of capacity for GBR trains will be taken in accordance with any Infrastructure Capacity Plan. However, the current wording of Clause 63 does not in fact make this clear, and in fact explicitly states that the Clause applies when deciding on access for other parties (Clause 63 (1)(a)) – in other words placing Clause 63 ahead of Clause 61. We believe this clause must be amended to align with the stated intent of the new process, in which the capacity duty is second to the Infrastructure Capacity Plan.

Amendment: Amend Clause 63 to ensure that capacity allocated for GBR services, future GBR services and the carrying out of work is only done so in line with the relevant Infrastructure Capacity Plans as described in Clause 61. *Amendment: Include a new provision under Clause 63 requiring GBR to also provide capacity for the carriage of goods by rail, including any current services and capacity for future growth.* *Amendment: Include a new provision under Clause 63 requiring GBR to also provide capacity for any service for which a contractual commitment exists.*

16. We are also concerned by Clause 18 (4) which allows GBR to exercise its capacity duty without having any regard to its general duties, including its duties on public interest, rail freight etc. We can see no reason for this exclusion, and consider it to be dangerous for non GBR users of the network. GBR's key duties should apply to all actions it takes when operating the network for its own, and others, services.

Amendment: Delete Clause 18 (4) in its entirety

17. *ORR Appeals Function:* GBR will be a powerful monopoly of track and GBR trains, and the overarching changes in the Bill significantly reduce the independent oversight of ORR, leaving Ministers holding GBR to account. Although we welcome the provisions for freight outlined above, there is still a significant risk that GBR could act to favour its own trains restricting growth for freight. As such, it is essential that non GBR operators have an independent appeals function which is powerful, easy to use and able to take action effectively.

18. However, the provisions in Clause 68 of the Bill are far from adequate. We have taken legal advice on these provisions which has highlighted that;

    - The new judicial review thresholds, and equivalents in Scotland, makes for a very high bar to satisfy. Given the new broad and discretionary powers granted to GBR and Ministers throughout the Bill, the bar to proving that GBR has acted in a way which breaches the principles of public decision making (illegality, irrationally, not following due process or not honouring legitimate expectations) will become high and difficult to envisage. The determining issue will no longer be whether the decision reached by GBR was correct but whether it has been lawfully reached.

    - Any remit for the ORR to utilise competition law will be negated by Clause 63 which grants GBR a duty to ensure current and future capacity for its own operators.

    - The usual time to bring a claim under Judicial Review procedures is three months from the decision but, due to the additional powers at Clause 68(6), the Secretary of State may give directions which could reduce time limits on the ORR, use fees to price out the challenge and place further barriers on an appeal being brought or heard.

    - Even if the barriers described above are overcome, the ORR is only able to substitute its own decision over that made by GBR if the decision relates to timetabling and, as described in Clause 68(4)(b), there had been an error of law and, without the error, there could only have been only one decision which Great British Railways could have reached. To take just the last barrier, considering the number of timetable options across the network, it is difficult to envisage only one timetabling determination.

- With regard to GBR's determinations around access and use, charging and performance, where the ORR cannot substitute a decision and only remit a decision for GBR to reconsider, assuming the barriers to judicial review are met, this clause does not give comfort that the reconsideration will lead to a substitution of the ORR's own determination.

19. We therefore consider that the Bill provisions on the appeals function as written in fact leave rail freight highly exposed, with no effective route to challenge a decision made by GBR.

Amendments:

- *Delete Cl 68(1) which requires that appeals may only be made under Judicial Review principles*
- *Change Cl 68 (4) (b) to remove other barriers to the ORR's determination, such as the need to demonstrate an error of law or that only one decision could be reached*
- *Allow the ORR to determine all appeals contemplated in the Bill on the merits and to send a matter back to GBR for reconsideration or allow the ORR to substitute its own decision for the decision in question*
- *Delete Cl 68 (6) which could allow Ministers to erode time limits/increase the fees/add further layers to frustrate the process.*

20. *Track Access Charges:* The Bill sets out the future framework for access charges for freight. In headline terms the charges will be calculated in a similar way to today (costs directly incurred by running the train) which we welcome.

21. However, the Bill requires extra costs to be levied through a mandatory reservation charge for capacity which is booked and then not used (for example, if a customer cancels a train due to poor weather) (Clause 64 (1) (b)). This provision is in the current regulations as an option however this clause makes it mandatory. In our discussions with officials, they have been clear that the intent is to maintain the ability to raise this charge in future not to enforce it from day one. For this to be true however, the clause needs to be amended.

Amendment: Clause 64 (1) (b) Change <u>must</u> to <u>may</u> in relation to the provision of charges for trains which are planned but do not operate in full.

22. The Bill also allows for extra costs to be levied on freight through a general clause 64(3) which allows GBR discretion to charge more if 'an efficient operator can pay it'. Again, the current regulations provide for a similar test based around whether 'the market can bear' which has led to Network Rail charging an increased charge to some freight commodities. However, the wording in the Bill provides a far wider provision, based solely around the financial status of the freight operator and not the customer (who in effect pays the charge through their haulage contracts). We believe this is more difficult to interpret, and will mean that the charges cannot be targeted to any particular sub

section of customers, leading to the risk of higher charges for all of rail freight.

23. It is essential that the powers to charge more than the standard charge are strictly limited for GBR, and enable any increased charges to be tested against the freight market and not solely the freight operator.

Amendment: Amend Clause 64(3) to more closely reflect the current legal provisions of the 'market can bear' test

24. *Performance Regime:* The Bill requires GBR to operate a performance regime for non GBR operators which we welcome. It is important that both GBR and operators are incentivised for high performance. We accept that the detailed provisions of any new regime will be defined in the AUP. However, the Bill (Clause 65 (3) (b)) mandates that GBR (but not operators) will avoid payment where it is 'not their fault', without definition of what this means. This suggests that GBR could exclude themselves from delays caused by trespass, suicide, poor weather and so on. Whilst some level of force majeure is reasonable for both parties, we believe that the details of this should be left to the AUP, with this clause amended accordingly.

Amendment: Clause 65 (3) (b) should be amended to apply to both GBR and non GBR operators, and with the details of any exclusions in the AUP. Alternatively, this clause could be deleted.

25. Clause 66 requires consultation on amendments to the AUP and the various other provisions referenced. Although the clause is broad, there is no specific reference to the need to consult non GBR operators. As non GBR operators will be the most affected by these provisions we believe they should be explicitly referenced.

Amendment: Clause 66 amended to explicitly require consultation with non GBR operators

26. *Super Powers of GBR and Secretary of State:* Throughout the Bill there are clauses which give significant powers to the Secretary of State and GBR to amend policies, plans and requirements e.g. through Directions or Guidance and by regulation. Whilst we recognise that the Bill must support future circumstances, we are concerned that the extent of powers listed will undermine certainty for rail freight and lead to powers being potentially used to 'change course' on a frequent basis.

27. We believe there should be an overarching review of the Bill powers to determine whether an appropriate balance has been struck. If the aim is to move operational responsibility of the railway from DfT to GBR, as the controlling mind, it appears perverse for so many powers and so much discretion to remain with DfT.

28. There are three particular areas of concern. Firstly, there is the possibility that the Secretary of State and/or Scottish Ministers could issue Directions and Guidance under Clauses 7, 8, 9 and 10 to overturn a specific access decision made in the Infrastructure Capacity Plan (Clause 61), the Capacity Duty (Clause 63) or in an Appeal (Clause 68).

Amendment: Limit clauses 7, 8, 9 and 10 so they cannot be used to overturn an access decision made under clauses 61 and 63, or an appeal made under clause 68.

29. Clause 71 gives a power for the Secretary of State to remove current track access rights from current access agreements until they expire. Although most freight contracts expire in 2030, there would be a period of around 2 years from GBR 'go live' until expiry, where this clause could be used to take freight trains off the network. We recognise that the stated purpose of the clause is to enable technical amendments to be made to contracts to align with the new framework, and we are not opposed to that in principle, but the ability to remove track access rights is of significant concern.

Amendment: Amend Clause 71 to remove the ability for regulations to terminate access rights.

30. Clause 72 enables the Secretary of State by regulation to intervene in non GBR owned infrastructure including rail freight terminals, to change the legal framework of their operation including setting conditions of access and charges amongst other matters. The clause also permits the Secretary of State to make provisions about competition in the market for provision and supply of service facilities.

31. In our discussions with officials, we have been assured that the intention is to enable GBR to take over other infrastructure such as the Heathrow Branch or the Core Valley Lines, but nonetheless it is a risk to rail freight as presently worded. We believe freight terminals should be explicitly out of scope. The clause represents a significant risk to new investment in terminals, given the ability for intervention on competition, charges and access.

Amendment: Remove infrastructure and service facilities used for freight from the scope of Clause 72

8 January 2026