

THE WILLIAMS-SHAPPS PLAN FOR RAIL – BACK ON TRACK

21 MAY 2021 • ARTICLE



The long-awaited Williams report arrived yesterday – 20 May 2021 – with the publication of UK government White Paper “The Williams-Shapps Plan for Rail”. The review started in autumn 2018 and industry rumours suggest the report was held back to release at an opportune political moment. Then, of course, the Covid-19 pandemic threw the world into disarray, and immediately we saw an almost total drop in UK passenger rail traffic volume, with numbers in April 2020 falling to just 4% of previous demand. Publication was again delayed as the government focussed on the crisis. Now released, it is good to see that the impact of the pandemic has been considered throughout the report, which clearly takes account of the (perhaps permanent) change in the UK’s use of the rail network.

The report contains 62 commitments. We set out here some of the key points.

"It is good to see that the impact of the pandemic has been considered throughout the report, which clearly takes account of the (perhaps permanent) change in the UK’s use of the rail network."

A SINGLE UNIFYING AUTHORITY

One of the biggest public complaints since privatisation of the railways in the 1990s has been the fragmentation of the system, leading (some would say) to a culture of shifting the blame when things go wrong. A new public body, Great British Railways (GBR), will bring the network under single national leadership, similar to the role of Transport for London. GBR will own the infrastructure (though not the rolling stock – this is not a renationalisation), receive fare revenue (so taking the risk on passenger numbers), and run the network and plan timetables, amongst other things. GBR will take over roles from various disparate organisations, including the Rail Delivery Group and most rail functions which are currently the responsibility of Department for Transport (DfT). Network Rail will be absorbed into GBR.

AN END TO FRANCHISING

WATSON FARLEY & WILLIAMS

As has been predicted for some time – and hastened by the impact of the pandemic and the emergency measures which were put in place to protect train operators from the effects of the resulting catastrophic fall in ticket revenue – franchising will be replaced by Passenger Service Contracts. These concession agreements will generally see the operators paid a fee for running the service, with GBR receiving the benefit of ticket revenue (although some contracts are expected to involve some level of revenue risk sharing). Operators will receive incentives, based on various factors including safety, punctuality and passenger satisfaction.

Even pre-pandemic, the franchise system was struggling. Competitions were delayed or not progressed, with direct awards made instead. Since 2012, approximately two-thirds of contracts have been awarded without competition. Further, recent years have seen the failure of franchises, with the services being taken over by the government's operator of last resort. Prior to the UK lockdowns and the implementation of the Emergency Recovery Measures Acts, there were expectations that other franchises would go the same way. It is expected that this new system will be simpler to navigate, increasing the level of competition amongst operators to bid for tenders.

The current emergency measures are being replaced by National Rail Contracts (already signed by South Western Railways and TransPennine Express), which will bridge the gap to Passenger Service Contracts. These Passenger Service Contracts will take into account regional requirements, and may need to include a mixture of incentives where services encompass both local and longer-distance routes. The length of contracts will also vary and it is anticipated that, where major investment is required, contract terms will be longer than the typical seven years seen in franchise agreements. Initial competitions for Passenger Service Contracts are expected to be launched in 2022.

LOCAL FOCUS

GBR will be made up of regional divisions, with budgets and delivery held at local level, allowing for a better focus on the precise needs of local communities. Existing devolved authorities, as in Merseyside and Wales, will continue to exercise their current powers and will work in partnership with GBR.

FREIGHT

The freight sector will, it is promised, “benefit from national co-ordination, new safeguards and a rules-based access system”. The law on track access will be changed and simplified and a “new generation of contracts and processes will be developed”. GBR will have a statutory duty to promote rail freight to “secure economic, environmental and social benefits”.

NETWORK GROWTH AND LONG-TERM INVESTMENT

Billions are intended to be invested in new lines, train services and electrification. The current five-year funding period, which runs until 2024, will be maintained and it is intended that subsequent five-year periods will continue to run once GBR is established.

GBR will be responsible for putting a 30-year strategy to Ministers and will be responsible for achieving the agreed results.

"A new public body, Great British Railways (GBR), will bring the network under single national leadership, similar to the role of Transport for London."

ENVIRONMENTAL

The report has a strong focus on the environmental benefits of rail and the further improvements being made in this area such as significant electrification plans and trials for battery and hydrogen-powered trains.

NEXT STEPS

DfT is setting up a Rail Transformation Programme to set out the phases of delivery and to work to design and implement the proposals set out in the report. The government also plans to establish an advisory group to be chaired by Keith Williams. Andrew Haines, the Chief Executive of Network Rail, has been asked to develop plans for the establishment of interim arrangements.

Clearly, many of the proposals made by the report will require significant further work to consider how best to implement them, as well as new legislation. In time, operators, lessors and financiers will need to consider the proposed new contracts in detail, to assess the impact on their current operations and on future plans. We will continue to monitor developments in this area.

KEY CONTACTS



LOUISE MOR
PARTNER • LONDON

T: +44 20 7814 8066

lmor@wfw.com

DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.