

Framework for the Memorandum of Understanding between the Scottish Ministers and the Secretary of State for Transport

1. Parties

The Memorandum of Understanding will be made between:

- a. **The Scottish Ministers**
- b. **The Secretary of State for Transport.**

2. Context

This document sets out the basis, but does not constrain the final contents, of the Memorandum of Understanding (MoU) between the Scottish Ministers and the Secretary of State to support implementation of the Railways Bill in Scotland. The MoU is formally recognised within the Railways Bill, providing it with a statutory basis. It reflects the shared ambition to deliver a more integrated railway, that is suitably accountable to Scottish and UK Ministers for their respective responsibilities, and to make possible the same benefits, and create the same level of opportunities, from rail reform in Scotland as in England and Wales.

3. Legislative Foundation

Subject to the passage of the Railways Bill, the MoU:

- a. shall be prepared and published by the Secretary of State and the Scottish Ministers to set out how they will work together in the exercise of their respective functions in relation to railways and railway services; and
- b. may cover specified topics.

4. Purpose

The purpose of the MoU is to meet the requirements in the Railways Bill and outline the shared objectives of Scottish and UK Ministers for how transition to an accountable and more integrated railway in Scotland is overseen and managed, including the governance underpinning a more integrated railway in Scotland.

5. Useful Definitions and Points of Reference

The MoU will include a definitions section, to ensure a shared understanding of the objectives.

6. Scope of the Memorandum of Understanding

The MoU shall cover, without limitation, the areas described in sections 7 to 12.

7. Application:

- 7.1 The MoU is intended to be an “evergreen” document that sets the expectations for delivery of the railway in Scotland, but will be subject to review under the conditions outlined further below

- 7.2 The MoU will be applicable from the date of signing, where references are made to Great British Railways (“GBR”), this may apply to Network Rail (NR) and/or DfT Operator (DfTO), if signed in advance of standing up GBR. Both the Secretary of State and Scottish Ministers acknowledge that some components of the agreement will only be applicable following the Railways Bill 2026 coming into force, which may be a continuous process as GBR is established, with governance processes adapting as the transformation is implemented.
- 7.3 This Framework for the MoU sets clear principles and a direction of travel on the final contents of the MoU between the Secretary of State and Scottish Ministers. In the interests of rail users in England, Scotland, and Wales the UK and Scottish governments commit to continue working closely together on the contents of the final MoU, in good faith and in line with the direction established, to finalise the MoU as the Railways Bill continues its passage through Parliament and GBR's design and implementation plan is agreed.
- 7.4 Nothing in the MoU is intended to confer day-to-day operational control of Scottish Minister owned infrastructure or Scottish Ministers' passenger service provision on the Secretary of State or the Department for Transport, nor to undermine the devolved responsibilities of the Scottish Ministers.
- 7.5 The MoU should cover the following areas, agreed by both the Secretary of State and Scottish Ministers, and following the commitments within legislation:
- Delivering a more Integrated Railway within Scotland
 - Accountability of GBR to the Secretary of State and the Scottish Ministers
 - Principles of Issuing Directions and Guidance to GBR.
 - Principles of Funding a more Integrated Railway
 - Capacity Allocation
 - Passenger Council Standards – accessibility
 - Governance
 - Information Sharing
 - Review and Amendment of the MoU

Delivering a more Integrated Railway within Scotland

8 Outcome: Establishing an appropriate vehicle to deliver a more integrated railway within Scotland. This vehicle could be an alliance between a Scottish Ministers' owned company (e.g. ScotRail) and GBR, or commissioning a subsidiary of GBR or a jointly owned company with Scottish Ministers to provide passenger services on the Scottish Ministers' behalf.

- 8.1 GBR will not roll back devolution or functional decentralisation, regardless of the final delivery model for the railway in Scotland.
- 8.2 If the option of commissioning a GBR subsidiary or jointly owned company, where GBR is the majority shareholder, to deliver integrated railway services on behalf of Scottish Ministers is pursued:
- a. The company will be Scotland domiciled.
 - b. Scottish and UK Ministers and GBR will agree an approach to assets which presents the best outcome for the integrated railway in Scotland.
 - c. As a GBR subsidiary (or jointly owned company), the Bill automatically exempts the operator of Scottish services from provisions in the Bill which would otherwise require them to pay track access charges. This arrangement would ensure parity between GBR and Scottish services, meaning that in the absence of paying a charge, Scottish services would need to follow a cost apportionment process as per Clause 64(5) of the Bill instead.

- d. Scottish Ministers will have authority to step back from any jointly owned company or subsidiary arrangements at any point, with appropriate notice, and after the parties have agreed to appropriate transfer scheme arrangements where necessary.
- e. Where the Scottish Ministers: (i) delegate any of their functions to a GBR subsidiary or jointly owned company; or (ii) award a contract to the GBR subsidiary or jointly owned company in respect of the delivery of their functions, the terms of the delegation/contract will require GBR to obtain the consent of the Scottish Ministers before delegating the exercise of the functions in view to any other GBR company.

8.3 Where Scottish Ministers chose to pursue an alliance arrangement rather than a GBR subsidiary or joint owned company model, the SoS will support a deepened operational and strategic partnership between ScotRail and GBR. This would aim to deliver a more integrated railway in Scotland without changing ownership and without altering devolved powers whilst building on improving the existing corporate structure in Scotland to facilitate this.

8.4 Branding:

- a. Where services are designated by the Scottish Ministers, including when being delivered via a GBR subsidiary or jointly owned company, the Scottish Ministers will retain full control of branding of services - including trains, stations and uniforms. Both ScotRail and Caledonian Sleeper's bespoke train livery and station branding will remain outside the scope of any GBR changes and will be preserved and developed over time at the discretion of the Scottish Ministers. Stations operated by ScotRail will also retain current Scottish branding within full control of Scottish Ministers. This does not apply to SoS designated services.
- b. Where GBR assets are branded GBR, and are funded by the Scottish Ministers, including infrastructure, major delivery works, road vehicles and bridge signage, these should also prominently feature the Scotland's Railway branding.
- c. Where stations in Scotland are operated by GBR, currently Glasgow Central High Level and Edinburgh Waverley, Transport Scotland must be consulted with regards to station branding and signage to ensure that appropriate ScotRail and Scotland's Railway branding is sufficiently prominent, in particular to support passenger movements through the station, including accessibility. At those stations GBR must ensure the use of GBR advertising space in the station to advertise its services is sympathetic to other operators to ensure this does not inadvertently mislead or confuse passengers.

8.5 Ticketing:

- a. Where services are designated by Scottish Ministers, including those delivered via a subsidiary of GBR or jointly owned company, Scottish Ministers will seek to align such services so as to retain ticketing integration (retail, technology, infrastructure, customer management) with GBR services in England & Wales though no restrictions will be placed on Scottish Ministers when implementing ticketing measures for retail, products, technology infrastructure or customer management and proposition, in order to deliver upon Scottish Ministers strategic intent for accessible, affordable and available ticketing.
- b. Scottish Ministers have committed to develop proposals for a National Integrated Ticketing System to provide for integrated ticketing across operators and modes and will require rail services to integrate with such a system (where services are designated by the Scottish Ministers, including those delivered via a subsidiary of GBR or jointly owned company).

Accountability to the Secretary of State and the Scottish Ministers

9 Outcome: Establish clear, published, accountability mechanisms and underpinning process, for GBR and its subsidiaries or jointly owned companies, to Scottish Ministers and the Secretary of State, as aligns to their responsibilities.

9.1 The Secretary of State and Scottish Ministers expect that the Articles of Association of a jointly owned company or GBR subsidiary, if either is established as the corporate vehicle for integration in Scotland, will include details on:

- a. The requirement for decisions taken by either the GBR subsidiary or jointly owned company, which impact matters reserved to the UK Government, require approval from the GBR board, acting on behalf of the SoS.
- b. The appointment of the chair of the subsidiary or jointly owned company will be run as a Scottish Government public appointments process, with the consent of GBR or the Secretary of State.

9.2 GBR-SoS Framework Agreement - the commitments to Scottish Ministers that are outlined in the NR Framework agreement, including as it relates to the appointment of the GBR chair, will be retained in the GBR-SoS Framework Agreement.

- a. Scottish Ministers will be consulted on the overall recruitment strategy and skill requirements of the GBR board, with an opportunity to outline the challenges faced in a Scottish rail context, to ensure sufficient knowledge of these issues on the board.
- b. Scottish Ministers will be consulted on the appointment of the GBR Chair and Chief Executive.
- c. Scottish Ministers will have the opportunity to suggest candidates who might apply for the Chair and Non Executive Director roles, and raise any concerns pre-appointment, through a robust and transparent, public appointments process.

9.3 Tri-Partite Agreement - Scottish Ministers will be a third signatory on the tripartite framework agreement between any subsidiary/jointly owned company of GBR in Scotland and main company GBR. The Tripartite agreement would outline:

- a. The processes through which any subsidiary/jointly owned company reports and is accountable to the Scottish Ministers and Transport Scotland.
- b. The provision of suitable management information on payments, financial performance and delivery within central functions as it relates to Scotland and Scottish services.
- c. The processes through which any GBR subsidiary/jointly owned company will evidence its delivery against its duties within the Bill has had due regard to Scottish Ministers' Strategies, and has consulted Scottish Ministers as appropriate.
- d. That the appointment of the Chair of any subsidiary/jointly owned company will be a Scottish Government public appointment, with final appointment subject to the consent of GBR.
- e. That the Chair of any subsidiary/jointly owned company will appoint the subsidiary/jointly owned company board with approval of Scottish Ministers and the consent of GBR.
- f. That GBR will have an appointment on the GBR subsidiary or joint owned company board. This appointment will be approved by the Secretary of State, in consultation of Scottish Ministers, and will have a direct link to the GBR board.

- g. The agreement will be consistent with the requirements of the Scottish Public Finance Manual.
- h. The practical processes for the Scottish Ministers' role in the approval of the GBR Business Plan for Scotland and the interaction with SoS's approval of GBR's Business Plan for Great Britain.

9.4 It is recognised that the Scottish Ministers will work with the ORR in respect of the terms on which the ORR will provide information and advice to the Scottish Ministers in connection with the exercise, in Scotland, by GBR of: (i) its statutory functions in relation to: Scottish railway activities; or (ii) any functions GBR is given under arrangements with the Scottish Ministers under section 4 of the Railways Bill (Exercise of functions of Scottish and Welsh Ministers).

9.5 If it is not possible to put such arrangements in place, for any reason, the Secretary of State will request that the ORR share with the Scottish Ministers any information or advice it provides to the Secretary of State under section 69(3) of the Railways Act 1993 and which pertains to the exercise, in Scotland, by GBR of: (i) its statutory functions in relation to Scottish railway activities and activities which have a material impact on Scotland's railway; or (ii) any functions GBR is given under arrangements with the Scottish Ministers under section 4 of the current Railways Bill.

Principles of Issuing Directions and Guidance to GBR

10 Outcome: Establish a shared set of principles as to when directions and guidance are issued consistent with accountability framework. Provide assurance to GBR that there is a clear and collaborative approach to providing directions and guidance, that does not lead to conflicting directions from different Government Ministers, and respects GBR's independence.

- 10.1 As set out within the Railways Bill, the Scottish Ministers and Secretary of State will have the power to issue directions to GBR including its subsidiaries or jointly owned companies. The Railways Bill also sets the parameters of Scottish Ministers directions and guidance powers and where the Secretary of State may revoke a direction of Scottish Ministers following consultation with Scottish Ministers.
- 10.2 Prior to issuing directions or guidance both Ministers should consider whole system impacts of the direction, and where it may affect the respective Ministers' functions.
- 10.3 A clear resolution pathway, including the steps underpinning issuing a direction should be developed by each Government, with clear points of similarity.
- 10.4 If GBR is delivering Scottish Ministers' functions on their behalf, the Secretary of State for Transport will seek Scottish Ministers' consent before issuing directions or guidance to GBR that directly affects Scottish Ministers' devolved powers on passenger services designated by Scottish Ministers. Consent will not be sought on matters relating to the access regime, or otherwise for which Scottish Ministers do not have statutory responsibilities to provide.
- 10.5 Ministers will have a reciprocal commitment to share their internal process for issuing directions and guidance and ensure that they proactively engage the other one another ahead of issuing any and all directions, at the most appropriate point.
- 10.6 When consulting Secretary of State on the publication of a direction, Scottish Ministers should provide appropriate time for the Secretary of State to feedback and giving due regard to the Secretary of State's response.
- 10.7 When consulting Scottish Ministers on the revocation of a direction, Secretary of State should provide appropriate time for Scottish Ministers to feedback and giving due regard to the Scottish Ministers' response.

- 10.8 Both the Secretary of State and Scottish Ministers agree that the publication of a direction should be used proportionately and with a clear justification as to why a direction has been used over other accountability levers, and addresses issues that couldn't have been reasonably foreseen in the business planning process.
- 10.9 Both Governments should have a clear mechanism for tracking the published directions and guidance and commit to sharing these with one another regularly.

Principles of Funding a more Integrated Railway

11 Outcome: Setting out basic principles for managing funding where there is cross-over between GBR and Scottish Ministers' Statement of Objectives.

- 11.1 Scottish Ministers will continue to fund devolved rail services in Scotland.
- 11.2 Scottish Ministers will continue to contribute to the cost of essential services provided by the central functions of GBR, with a role for the ORR to advise SoS and Scottish Ministers on the appropriate value of this share, similar to ORR's role in determining them today. Both the Scottish Ministers and SoS will ensure that they have due regard to this advice.
- 11.3 Scottish Ministers, in consultation with GBR, will also be able to fund discretionary central services that Scottish Ministers and GBR believe would benefit Scotland. Where these services could also result in additional funding commitment from the Secretary of State, the Secretary of State must also be consulted.
- 11.4 GBR and Scottish Ministers will co-develop a mechanism for timely and accurate financial reporting and to set out Scottish Ministers' contribution and to identify any subsequent changes to costs.
- 11.5 A mechanism will be needed to reflect cost apportionment between any GBR business unit, subsidiary, or jointly owned company, funded by Scottish Ministers and GBR business units funded by SoS. This mechanism would reflect the full costs of any GBR Scotland's subsidiary or jointly owned companies services using the infrastructure funded by SoS – and vice versa. Appropriate payments would then be made to ensure the financial impact on each funding Government is proportionate/neutral.
- 11.6 If GBR is failing to deliver the outputs and outcomes set by the Scottish Ministers and where;
 - a. all other avenues of redress have been exhausted;
 - b. there is no impact on safety/standards;
 - c. there is no impact on the Secretary of State's funded outputs and outcomes, or the overall financial sustainability of the company;the Scottish Ministers can withhold its funding to GBR in accordance with the terms of either a grant agreement or public service obligation contract issued by the Scottish Ministers, in-line with legislation.
- 11.7 Scottish Ministers must publish details of any reductions made to financial assistance provided to GBR via the new Funding Periodic Review.
- 11.8 SoS and Scottish Ministers will support one another as funders of the railway, endorsing an appropriate business plan that will meet one another's objectives, as set out in their respective statement of objectives. This could also involve GBR-led consultation with one another or relevant stakeholders where significant decisions affecting the business plan impact upon meeting these objectives.
- 11.9 Under the Bill, where GBR wants to update the contents of the business plan, it will need to come back to funders for approval. These updates may occur annually, providing a regular check in point for Secretary of State and Scottish Ministers.
- 11.10 The MoU will address how Secretary of State and Scottish Ministers will engage on strategic cross border rail matters.

Capacity Allocation

12 Outcome: Ensuring that the Secretary of State and GBR retain full oversight of the access regime as a reserved competency while ensuring the access regime supports Scottish Ministers' strategy for Scotland.

- 12.1 Scottish Ministers will be statutory consultees on the Access and Use Policy. For the other documents and policies that GBR is to prepare relating to the access chapter of the Bill where the interests of Scottish Ministers may be materially affected or impacted, GBR will consult Scottish Ministers directly.
- 12.2 SoS would anticipate Scottish Ministers, as funders of the Railway in Scotland, to be engaged by GBR on the development of the charging framework ahead of each funding period, and at any point where significant change may occur.
- 12.3 There will be strategic planning of capacity allocation by GBR across its network. For Scottish services this will be developed locally / practically delegated to a GBR Scotland subsidiary/jointly owned company in line with its statutory duties which includes having regard to Scottish Ministers' rail strategy
- 12.4 When developing the Infrastructure Capacity Plan, GBR will do so in line with its statutory commitments which include having regard to Scottish Ministers' rail strategy. In exercising its decision-making, the Secretary of State will support GBR to work collaboratively and make fair and transparent trade-offs across the wider network, balancing its statutory duties and the interests of SoS, Scottish Ministers and others in a fair and transparent way.

13 Establishing Transfer Schemes

- 13.1 Where a transfer scheme is to be used, both Ministers will use the tools at their disposal to minimise tax liability of transferred assets to the greatest degree possible in respect of both Scottish and UK Government tax.

14 Passenger Council Standards – Accessibility

- 14.1 Should the Scottish Government have any concerns with the standards proposed, which it cannot resolve with the Council, it should raise these with SoS, who will take these concerns into account before consenting to standards proposed by the Council.

15 Governance

- 15.1 Ministers will set the expectation of a partnership relationship between Transport Scotland and GBR, which includes a clear governance structure, and a clear escalation route for addressing differences.

16 Information Sharing

- 16.1 Ministers agree to develop an appropriate information sharing agreement, including that information which is relevant to the delivery of an aligned railway in Scotland or as it affects, or is affected by, cross border services.

17 Review and Amendment of the MoU

- 17.1 To be reviewed periodically by both parties (as a minimum per funding period)
- 17.2 Joint evaluation of delivery outcomes and their alignment with published strategies of UK and Scottish Ministers.
- 17.3 Amendments must be made by mutual consent.

17.4 Ministers agree that if any proposed change, decision, or issue arising under the MoU cannot be resolved through the agreed joint governance processes, or is considered material by either party, they will give due attention to the issue for resolution.

17.5 The MoU will be published by both Scottish and UK Ministers, and respective parliaments advised.

18 Signatories

The MoU shall be signed by:

- a. The Secretary of State for Transport (UK Government)
- b. The Scottish Ministers on behalf of the Scottish Government