

IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2005–06

CROSSRAIL BILL

P E T I T I O N

Against the Bill – On Merits – Praying to be heard by Counsel, &c.

TO THE HONOURABLE THE COMMONS OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND IN PARLIAMENT ASSEMBLED

THE HUMBLE PETITION of:

ATOC LIMITED, also known as THE ASSOCIATION OF TRAIN OPERATING
COMPANIES:

SHEWETH as follows:—

- 1 A Bill (hereinafter referred to as “the Bill”) has been introduced into and is now pending in your Honourable House intituled “A Bill to make provision for a railway transport system running from Maidenhead, in the County of Berkshire, and Heathrow Airport, in the London Borough of Hillingdon, through central London to Shenfield, in the County of Essex, and Abbey Wood, in the London Borough of Greenwich; and for connected purposes.”.
- 2 The Bill is promoted by the Secretary of State for Transport (hereinafter called “the Promoter”).

Relevant clauses of the Bill

- 3 Clauses 1 to 20 of the Bill together with Schedules 1 to 9 make provision for the construction and maintenance of the proposed works including the main works set out

in Schedule 1. Provision is included to confer powers for various building and engineering operations, for compulsory acquisition and the temporary use of and entry upon land, for the grant of planning permission and other consents, for the disapplication or modification of heritage and other controls and to govern interference with trees and the regulation of noise.

4 Clauses 21 to 44 of the Bill together with Schedule 10 make provision for the application with modifications and the disapplication in part of the existing railways regulatory regime which is contained in and in arrangements made under the Railways Act 1993 and associated legislation. In particular, they provide for the disapplication of licensing requirements, the imposition of special duties on the Office of Rail Regulation (“ORR”), the modification of railway access contract and franchising arrangements and the disapplication of railway closure requirements, and of the need for consent from Transport for London in relation to impacts on key system assets. Provision is also included to enable agreements to be required as between the nominated undertaker and controllers of railway assets, to govern the basis for arbitration and to provide for the transfer of statutory powers in relation to railway assets.

5 Clauses 45 to 59 of the Bill together with Schedules 11 to 14 contain miscellaneous and general provisions. These include provision for the making of transfer schemes, the designation of nominated undertakers, the devolution of functions and as respects other actions to be taken by the Secretary of State. Provision is also made in particular for the disapplication or modification of various additional miscellaneous controls, for the treatment of burial grounds, for the application of provisions of the Bill to future extensions of Crossrail, for the particular protection of certain specified interests and as respects arbitration.

Your Petitioners and their properties

6 Your Petitioners are ATOC Limited: a company whose shareholders are all members of the Association of Train Operating Companies. The Association’s members are the train operating companies that provide passenger rail services pursuant to

franchise agreements under the Railways Act 1993, as well as certain non-franchised passenger services.

7 Your Petitioners' current membership includes the following train operating companies that would be specially affected by the Crossrail Bill ("the affected train operators"):

- (a) c2c Rail Limited – which holds the franchise to run passenger train services on the London, Tilbury and Fenchurch Street railway and also runs services from Forest Gate to Liverpool Street using the Great Eastern Main line;
- (b) The Chiltern Railway Company Limited – which, amongst other operations, currently runs one train a day to and from Paddington;
- (c) CrossCountry Trains Limited, trading as Virgin Trains – which, amongst other operations, currently runs two trains a day along the Great Western Main Line between Maidenhead and Acton East;
- (d) Great Western Trains Company Limited, trading as First Great Western – which holds a franchise to provide passenger railway services along the Great Western Main Line;
- (e) First Great Western Link Limited – which holds a similar franchise to First Great Western Limited;
- (f) London Eastern Railway Limited, trading as ONE – which holds the franchise to provide passenger railway services along the Great Eastern Main Line; and
- (g) Silverlink Train Services Limited – which holds the franchise to provide passenger railway services along the North London Line.

8 As the official voice of the passenger rail industry, your Petitioners seek not only to represent the affected train operators, but also to protect the interests of any future holders of those franchises and their passengers. This Petition is therefore deposited on behalf of the entire passenger rail industry, including those who hold the franchises now, and those who are likely to hold them when the construction of Crossrail commences or will do so when Crossrail passenger services commence.

- 9 The affected train operators own or have an interest in numerous properties which are subject to compulsory acquisition or use under the Bill. These properties are mostly railway stations, sidings, depots or maintenance locations, and neighbouring land together with running rights over and apparatus in the railways affected by the Bill. Each of the affected train operators has also entered into track access licences and agreements with Network Rail Infrastructure Limited, which, subject to the timing of Crossrail and the continuance or removal of franchises, would be affected by the operation of the Bill.
- 10 In addition to the application of compulsory purchase and related powers in relation to these properties, the powers proposed in the Bill for the construction and operation of the works and for modifying the railway regulatory regime directly impact upon the continued operation of the passenger railway services provided by the affected train operators.
- 11 Your Petitioners and their rights, interests and property are injuriously affected by the Bill, to which your Petitioners object for the reasons amongst others, here stated.

Your Petitioners' concerns

- 12 Your Petitioners welcome in principle proposals for a railway transport system connecting stations to the west of London with stations to the east of London via Paddington Station, the proposed central London tunnel, Liverpool Street Station and the proposed Canary Wharf station. They recognise that Crossrail represents a major investment in the rail network, and could, if properly implemented, represent a great opportunity to improve train services in a congested part of the national rail network. However, your Petitioners are concerned that the proposals of the Bill will, as presently framed, substantially prejudice the operation of existing railway passenger services and the integration and operation of the national network. The proposals also prejudice the independence of the Office of Rail Regulation and the existing regulatory framework as a whole. This prejudice is unnecessary to achieve the aims of the Bill, and your Petitioners believe that the Bill can be amended to remove the offending provisions without compromising the achievement of the aims of the Bill.

Furthermore, the Bill and its supporting documentation provide insufficient information about the construction programme, and next to no information about the financing of the project. Regrettably, therefore, your Petitioners, as the representative voice of the passenger rail industry, cannot support the provisions of the Bill as they presently stand.

13 Your Petitioners' concerns fall within the following general headings:

- (a) construction impacts on existing services for passengers;
- (b) the proposed modifications to the railways regulatory regime and their undermining of the principle of independent economic regulation; and
- (c) devolution of functions under the Bill to Transport for London and the Greater London Authority.

14 Your Petitioners' concerns with particular aspects of the proposals are specified in more detail below.

Construction impacts

15 The works proposed under the Bill will be a massive endeavour. The combination of a new tunnel under central London, and a major construction project around the intensively used long-distance and commuter railways on the Great Eastern Main Line, Great Western Main Line and North Kent Line will be lengthy and very disruptive.

16 It is not clear, however, that adequate provision has been made to minimise the impact of the construction on passenger services.

17 Nor is it clear that there will be sufficient capacity following the completion of the works to accommodate both the existing passenger services and the proposed Crossrail services.

- 18 Your Petitioners are particularly concerned that the Bill provides very little detail about the timing of the proposed construction activities. Numerous possessions of the railway will be required to accommodate the works. These will give rise to disruption for customers on the affected train operators' railway services. The travelling public does not always discriminate between the various bodies operating on the rail network, and the particular reasons for delays or cancellations. All they will know is that the train operating company is unable to carry them to their destination as they wish. Accordingly, it is your Petitioners' members' reputations and revenue that will suffer from travel disruption caused by Crossrail. Your Petitioners are therefore concerned to secure that such disruption is kept to a minimum, that existing railway operations are appropriately protected and that they are fully consulted on the details of the proposed Crossrail construction timetable in good time for their members to be able to inform customers of any necessary changes to services.
- 19 A 2-week total blockade of Paddington, with "partial blockades" either side is proposed, but quite when this will happen is unclear. It is also unclear that this 2+ week period will be long enough to accommodate the works that are proposed to take place during it, and your Petitioners are naturally concerned that the period will extend substantially, potentially at very short notice to them. Your Petitioners require greater information on both the timing of and need for this blockade so that necessary mitigation and compensation measures can be determined and agreed.
- 20 Over head line electrification ("OHLE") is to be installed along much of the Great Western Main Line. This will also involve disruption to passenger rail services. Your Petitioners require greater information on the timing of these works so that necessary mitigation and compensation measures can be determined and agreed.
- 21 Platform extensions are proposed at many stations along the proposed Crossrail routes, with substantial additional works to be carried out at the following stations:
- (a) Maidenhead;
 - (b) Slough;
 - (c) West Drayton;
 - (d) Hayes & Harlington;

- (e) Southall;
- (f) West Ealing;
- (g) Ealing Broadway;
- (h) Acton Main Line;
- (i) Paddington;
- (j) Liverpool Street;
- (k) Stratford;
- (l) Ilford;
- (m) Romford;
- (n) Shenfield; and
- (o) Abbey Wood.

22 Again, your Petitioners require additional details of the timing and scope of this work from the Promoter, so that the affected train operators can properly inform their customers and necessary mitigation and compensation measures can be determined and agreed.

23 The Bill proposes that several other major works should take place on existing railways. These include—

- (a) new stabling facilities at West Drayton,
- (b) a new viaduct at Stockley flyover (Airport junction),
- (c) new track at Hayes & Harlington and Southall,
- (d) a new underpass near Acton Yard,
- (e) new sidings at Old Oak Common,
- (f) a reversing facility at Westbourne Park;
- (g) a portal for the central tunnel at Royal Oak;
- (h) realignment of the Great Eastern Main Line between the proposed Pudding Mill Lane portal and Stratford station;

- (i) a new underpass and sidings at Romford Depot,
- (j) new sidings at Gidea Park;
- (k) new sidings at Shenfield; and
- (l) reconstruction of the North Kent Line between Plumstead and Abbey Wood.

24 Again, your Petitioners require additional details of the timing and scope of this work from the Promoter, so that the affected train operators can properly inform their customers and necessary mitigation and compensation measures can be determined and agreed.

25 In the case of all the works and operations referred to in the preceding paragraphs, as affecting existing railway operations and the access rights of your Petitioners' members, your Petitioners further seek the Promoter's undertaking that all necessary mitigation will be agreed and affected train operators fully indemnified for any costs or losses that they may incur.

26 Clause 6(1) of and Schedule 6 to the Bill entitle the Promoter to acquire the affected train operators' running rights and other property interests in the land circumscribed by the limits shown on the deposited plans. Paragraph 6(1) of Schedule 6 entitles the Promoter to use this power to create new easements and other rights over land. Your Petitioners are concerned to ensure that these compulsory powers should not be used by the Promoter to gain running rights for Crossrail passenger services at the expense of the affected train operators and other potential operators. Your Petitioners humbly submit that the Bill should be amended to remove these running rights from the scope of the clause 6(1) compulsory purchase power and seek undertakings from the Promoter that—

- (a) he will follow the procedures set out in the Railways Act 1993 in order to obtain the rights necessary to run the Crossrail passenger services; and
- (b) any affected train operator who has running rights or other property interests acquired under the Bill will be compensated fully for the losses caused to them.

Railway regulatory matters

- 27 Clauses 21 to 44 of the Bill provide a modified regulatory regime for Crossrail, which would place Crossrail passenger services in an advantageous position compared with all other railway services, including the passenger railway services provided by your Petitioners' members. Your Petitioners take issue with these provisions, and are concerned that the Promoter thus far has produced only outline information of a notional timetable which, as it stands, is unworkable. At this stage, it is not clear how both Crossrail and other longer distance franchised passenger services will be accommodated on these routes, let alone charter or open access passenger train operations or freight.
- 28 Your Petitioners have the following general concerns about the operation of the railway provisions of the Bill:
- (a) clauses 21 to 26 as presently drafted would allow Crossrail passenger services exclusive use of some of the existing rail lines out of Paddington and Liverpool Street stations. They enable the Promoter to determine the minimum level of "principal Crossrail services" and to instruct the Office of Rail Regulation to amend, or terminate, existing track access agreements held by your Petitioners' members to make way for such services;
 - (b) if exercised in this fashion, these provisions will undermine the concept of independent economic regulation, and potentially reduce the capacity of the entire national rail network, by undermining Network Rail's ability to manage the network as a whole. This will prejudice the economic interests of your Petitioners' members;
 - (c) the prioritisation of the Crossrail passenger services will severely affect the existing train services provided by your Petitioners' members, and may result in extended journey times, or delays to longer distance services from outside the Maidenhead-Shenfield/Abbey Wood area served by Crossrail, and the provisions of the Bill would allow for some reduction in their number;
 - (d) the increased number of trains proposed to be run by Crossrail, and the reduced flexibility of operation that stems from the provisions of these clauses

of the Bill, will also severely constrain the ability of your Petitioners' members to provide adequate services for passengers at times of disruption or planned engineering work on the routes concerned. The effect of prioritisation of Crossrail services under these circumstances may be to exclude the use of the route by other services at these times;

- (e) under the circumstances described above, the passenger train services provided by your Petitioners' members may become slower and less reliable, and their reputation and value would be permanently diminished as a result. Whilst a full indemnity is sought, provision for this alone and in the absence of the application of the regulatory provisions of the Railways Act 1993 cannot operate effectively to protect the interests of passengers and your Petitioners' members.

29 Under clauses 21 to 33, the Promoter is able to direct that contracts be modified or revoked to ensure that Crossrail has sufficient train paths, and other operators, including your Petitioners' members, will have to make do with what is left. In your Petitioner's submission, this cannot be the best way to organise a crucial part of the national rail network. Your Petitioners cannot see why the Promoter does not simply agree arrangements with Network Rail and the ORR to operate under the existing regime set out in the Railways Act 1993. The existing regulatory processes provide for the possibility of access options that would protect the financial interests of Crossrail's funders, and enable the modification of timetables to accommodate Crossrail services. Importantly, the existing regime does this in a way that would ensure that your Petitioners' members are appropriately compensated for any changes to the existing arrangements that directly and adversely affect them. The Promoter has failed to provide any explanation or justification as to why these powers are necessary given that an existing regulatory regime already exists.

30 It would be possible to make arrangements that do not effectively evict the existing railway operators from their current train paths, as clauses 21 to 33 would. Network Rail should retain responsibility for the timetabling of all train services, including Crossrail services, and supervise Crossrail operations as part of their supervision of

the network as a whole. This would ensure flexibility across all lines, which the proposals for Crossrail's exclusive use of lines would not.

31 Your Petitioners had been hopeful that much progress towards reaching an agreement with the Promoter on these matters would have been made prior to the deposit of this Petition. However, so far as your Petitioners are concerned, despite your Petitioners expressing their concerns as soon as practicable after the Bill was published and indications then being given to them by the Promoter in May 2005 that an approach based on access arrangements under the Railways Act 1993 would be advanced, discussions have yet to be materially progressed. In the event that the necessary discussions have not been advanced and agreement reached before your Committee considers this Petition, your Petitioners will submit that the Bill be amended to remove clauses 21 to 33. At the very least, your Petitioners submit that provision should be made in the Bill for any train operators that are affected by changes to the existing arrangements to be fully compensated.

32 Clause 36(1) would enable the Promoter to close any railway passenger service, passenger network, station, or experimental passenger services because of the operation of Crossrail or the carrying out of any of the authorised works. The closure provisions of the Railways Act 2005 (which have only just been approved by Parliament) would be disappplied. Your Petitioners are concerned that this power could be used to require the discontinuance of any services provided by the affected train operators. Your Petitioners therefore submit that the Bill be amended to reinstate the procedural safeguards contained in the Railways Act 2005.

33 Clause 39(1) and clause 39(2) provide for the nominated undertaker and the controller of non-Crossrail railway assets, including the trains that the affected train operators operate that affect Crossrail, to give each other notice that matters affecting both of them should be dealt with by agreement. Clause 39(3) provides for arbitration where the terms of the agreement cannot be agreed. Your Petitioners welcome this provision. However, clause 40(3) gives the Promoter the power to direct the arbitrator as to the results that are to be achieved by the agreement, even – as clause 40(4) makes it clear – where the Promoter is a party in the proceedings. As the parties to any contested proceedings are likely by definition to have different views of the

results to be achieved by the subject matter of the proceedings, the Promoter is therefore in a position to influence the outcome of the arbitration. This appears to your Petitioners to infringe the right to have one's civil rights determined by an independent and impartial tribunal guaranteed by article 6 of the European Convention on Human Rights and the Human Rights Act 1998. Your Petitioners therefore submit that the Bill be amended so that the Promoter may not give such a direction in relation to any proceedings where he has an interest in the proceedings without the agreement of the other party.

Devolution of functions

- 34 Clause 53 would give the Promoter the power to devolve certain of his functions under the Bill to the Greater London Authority, Transport for London, or both of them. Your Petitioners are concerned that this power will be used to transfer to TfL the powers to construct and operate Crossrail separately from the national rail network, as well as compulsorily acquiring part of the existing national rail network. Such fragmentation would damage the provision of a high quality integrated railway for passengers and would directly prejudice the interests of your Petitioners' members. Your Petitioners humbly submit that the Bill should be amended to prevent the Promoter from using this power in this fashion.
- 35 As a general matter, your Petitioners submit that provision should be made for the Promoter to repay to your Petitioners all proper costs, charges and expenses (including the proper fees of such professional advisers as they may instruct) reasonably incurred in consequence of the Bill or of any provision made as a result of this Petition.
- 36 There are other clauses and provisions in the Bill which, if passed into law as they now stand, will prejudicially affect your Petitioners and their rights, interests and property and for which no adequate provision is made to protect your Petitioners.

Conclusion

37 Your Petitioners submit that the Bill fails adequately to safeguard and protect the interests of your Petitioners and of their subsidiaries and those of their tenants and should not be allowed to pass into law without these issues being addressed.

YOUR PETITIONERS THEREFORE HUMBLY PRAY your Honourable House that the Bill may not be allowed to pass into law as it now stands and that they may be heard by themselves, Counsel or Agents and with witnesses in support of the allegations of this Petition against so much of the Bill as affects the property, rights and interests of your Petitioners and in support of other such clauses and provisions as may be necessary or expedient for their protection or that such other relief may be given to your Petitioners in the premises as your Honourable House shall deem meet.

AND YOUR PETITIONERS WILL EVER PRAY, &c.

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P E T I T I O N

of

ATOC LIMITED (being THE ASSOCIATION OF
TRAIN OPERATING COMPANIES)

Against, the Bill – On Merits –
Praying to be heard by Counsel, &c.