



Department  
for Transport

## **Plan for Rail**

# **Impact Assessment supporting the draft Rail Reform Bill**

February 2024

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# Impact Assessment

The draft Rail Reform Bill will amend existing legislation (including the Railways Act 1993, and the Railways (Access, Management and Licensing of Railways Undertakings) Regulations 2016) to allow for the establishment of a new integrated rail body (IRB). The IRB will coordinate the railway with a single point of accountability. It will also bring the management of the network and functions of the franchising authority into one body to make decisions in the public interest. This will improve outcomes for customers and provide the private sector with the structure and confidence to make long-term investment decisions by allowing better functioning of relevant markets. To improve the customer offer, the legislation proposes to introduce specific duties in relation to the environment, accessibility and freight, set out in the IRB's licence, to ensure that accessibility on the railway is improved and the experience for disabled passengers is enhanced.

This overarching impact assessment describes the impact of establishing the IRB, and is followed by annexed impact assessments addressing specific elements of the draft Bill, such as accessibility, data, and environment. These additional impact assessments are provided to demonstrate the impact of the changes that we are proposing to primary legislation.

All impact assessments were developed based on the best available evidence to provide an assessment of the overall impact of the changes proposed.

The annexes are as follows:

- Annex A: Accessibility (page 25)
- Annex B: Data (page 39)
- Annex C: Environment (page 48)
- Annex D: ORR Competition Duty (page 60)
- Annex E: Amendments to the Access, Management and Licensing Regulations 2016 (page 73)
- Annex F: Power to Amend (page 83) – this is a regulatory provision and has been given a green opinion by the Regulatory Policy Committee.
- Annex G: Luxembourg Protocol (page 103) – this is a regulatory provision and has been given a green opinion by the Regulatory Policy Committee.

Please note that the department previously published a Passenger Champion impact assessment regarding Transport Focus alongside the legislative consultation. This is not being updated with the publication of the draft Bill given that the content does not require legislation in order to be implemented. Two additional impact assessments on the ORR Competition Duty and Amendments to the Access, Management and Licensing Regulations 2016 have been included.

<b>Title:</b> Draft Rail Reform Bill <b>overarching impact assessment:</b> Establishing a new Integrated Rail Body <b>Lead department or agency:</b> Department for Transport <b>Other departments or agencies:</b> N/A			<b>Impact Assessment (IA)</b>		
			<b>Date:</b> January 2024		
			<b>Stage:</b> Final		
			<b>Source of intervention:</b> Domestic		
			<b>Type of measure:</b> Primary Legislation		
<b>Contact for enquiries:</b> railreform.bill@dft.gov.uk					
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> Not applicable <sup>1</sup>		
<b>Cost of Preferred (or more likely) Option</b>					
<b>Total Net Present Social Value</b> NQ		<b>Business Net Present Value</b> NQ		<b>Net cost to business per year</b> NQ	<b>Business Impact Target Status</b> Qualifying provision (see footnote)
<b>What is the problem under consideration? Why is government action or intervention necessary?</b> 1. The Plan for Rail identified that the fragmentation of the railways has led to a lack of integrated decision-making across ‘track’ and ‘train’ at all levels, ranging from strategy to delivery of change and day-to-day operations. Too many decisions are limited by fragmented accountabilities. A lack of single unified leadership in the sector has resulted in systemic misalignment of objectives, which holds back innovation, confuses customers, and leads to inefficient decision making, in turn, inflating the long-term cost base. 2. To address this, the Plan for Rail concluded the railway needed a new Integrated Rail Body (IRB) that would bring together decisions on infrastructure and operations (‘track and train’) in a single organisation fully accountable to Ministers and its customers. 3. The IRB, named Great British Railways, will be the new strategic decision-making body for the railway, bringing together the best of the public and private sectors and integrating track and train by incorporating Network Rail and taking on responsibility from the Secretary of State for Transport for procuring and managing passenger train services. In doing so, the IRB will end the systemic fragmentation in the current system and provide strong unified leadership, to enable a more integrated railway with clearer accountabilities.					
<b>What are the policy objectives of the action or intervention and the intended effects?</b> The draft Rail Reform Bill will amend existing legislation (including the Railways Act 1993, and the Railways (Access, Management and Licensing of Railways Undertakings) Regulations 2016) to allow for the establishment of a new integrated rail body (IRB). <sup>2</sup>  The core objectives of the proposal for the IRB are: i. <b>Integration of track and train:</b> Bringing decision-making on infrastructure and operations together to end the fragmented industry structure and tackle misaligned incentives at the root of so many of the problems in the industry. This will ensure operational and infrastructure decisions are co-ordinated in a way that puts the needs of customers first. ii. <b>Accountability:</b> Integrating track and train into one body will make accountabilities clear, providing customers with a single body accountable for the whole sector and directly accountable to government. iii. <b>Strategic Decision-making:</b> In achieving the above, the IRB will be equipped to provide strategic leadership and be better situated to take long-term decisions for the railway as a whole. iv. <b>Financial sustainability:</b> The IRB will assume wider responsibility for both infrastructure and contracted passenger services finances when franchising authority functions are transferred from the Secretary of State to the IRB. Although funding for infrastructure and operations will be set through separate processes, the IRB will use integrated business planning to inform decisions around the allocation of costs to improve financial performance across the railway – creating the opportunity to drive efficiencies through reduced fragmentation and grow revenue through sensible investment.					

<sup>1</sup> RPC scrutiny has been provided for qualifying regulatory provisions. Here, this refers to the Power to Amend and Luxembourg Protocol impact assessments in Annex F and G, respectively.

<sup>2</sup> Policy objectives, here, refer to the overarching objectives of the proposal to establish the IRB. Objectives of each measure are set out in individual impact assessments (see Annex A-G).

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Do Nothing:** No intervention to remedy the key structural issues identified in the Plan for Rail. This option would mean that no legislation is taken forward to establish the IRB and work would need to be done to reverse the work that had been done in preparation for an IRB.

**Option 1 – Do Minimum:** Intervention short of legislation to improve collaboration and integrated decision-making within the existing rail structure. This option is sub-optimal as a longer-term solution. Whilst work to improve decision-making would be beneficial, it would not bring track and train together into a single body, end the fragmented industry structure or alter accountabilities.

**Option 2 – Do Something (preferred):** Introduce the complete set of measures in the draft Rail Reform Bill. Establish the IRB with legislation to transfer certain Secretary of State franchising authority functions to the IRB. This will integrate track and train and equip the IRB with the necessary tools to act as a strategic decision-making body. This is preferred because it fully delivers the key recommendation of the Plan for Rail and the benefits that flow from it, including an integrated railway, robust levers of accountability and ability to plan coherently for the future.

This impact assessment focuses on the overarching proposal for establishing the IRB. The policy options for some specific measures in the draft Rail Reform Bill are considered within the individual impact assessments (see Annex A-G).

**Will the policy be reviewed? Yes If applicable, set review date: TBC**

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		Traded: N/A		Non-traded: N/A

***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 by the responsible Minister:



Date: 20/02/2024

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Intervention short of legislation to improve collaboration and integrated decision-making within the existing rail structure.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2023/24	PV Base Year 2023/24	Time Period Years 7	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	NQ		NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

**Description and scale of key monetised costs by 'main affected groups'**  
Costs have not been monetised in this impact assessment.

**Other key non-monetised costs by 'main affected groups'**

**Government:** We do not have precise cost estimates for this scenario as there are a number of possible approaches, including in the role of Great British Railways Transition Team (GBRTT), that will impact the cost to government. Depending on the approach taken the costs to government may be similar, slightly lower or significantly lower than the costs of Option 2 - establishing the Integrated Rail Body with legislation.

**Businesses:** This may involve adjustment costs associated with familiarisation with the new structure of the rail sector depending on the approach taken forward.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	NQ		NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

**Description and scale of key monetised benefits by 'main affected groups'**  
Benefits of this option are not monetised. They are expected to be of the same nature as those provided by Option 2 - the Do Something but will be lesser as the full benefits will not be realised without the proposed additional legislation.

**Other key non-monetised benefits by 'main affected groups'**

**Government:** reduced costs of operating the railways. It is expected that Option 1 would deliver savings through improved working as a result of streamlining industry processes and avoiding duplication within the existing rail sector structure. However, some benefits are dependent on legislation and would not be realised under Option 1. Therefore, benefits to government are expected to be greater under Option 2.

**Businesses:** benefits from simplified market structure (improved decision making).

**Consumers:** improved experience for passengers, benefits to freight operators who will engage with a more coherent body.

Key assumptions/sensitivities/risks	Discount rate
Costs and benefits of the Do Minimum option have not been quantified in this impact assessment as work to develop the scope of reform without legislation is ongoing. For this option, the costs and benefits have been described qualitatively only.	3.5%

The key risk of this option is that without the changes to legislation proposed in this impact assessment the ability to drive forward change would be limited, and it will not be possible to realise the full benefits of structural reform.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NQ	Benefits: NQ	Net: NQ	
			N/A

# Summary: Analysis & Evidence

## Policy Option 2

**Description:** Do Something: Establishment of the role of Integrated Rail Body with legislative change (**preferred option**)

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
2023/24	2023/24	7	Low: NQ	High: NQ	Best Estimate: £575m <sup>3</sup>

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	NQ		NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	£381m

**Description and scale of key monetised costs by 'main affected groups'**

**Government:** transition costs associated with GBRTT, administrative costs of establishing the Integrated Rail Body (IRB) in legislation, ongoing costs associated with the running of the IRB. The total costs of structural reform are estimated to be £381m over the seven-year period starting in 2022/23 (2023/24 prices, discounted).<sup>4</sup>

**Other key non-monetised costs by 'main affected groups'**

**Businesses:** adjustment costs associated with familiarisation with the new structure of the rail sector.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	NQ		NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	£957m

**Description and scale of key monetised benefits by 'main affected groups'**

Only cost savings to the government are monetised- these are expected to be £957m over the seven-year period starting in 2022/23 (2023/24 prices, discounted). Other benefits are not monetised but are expected to exceed those for the Do Minimum due to the positive impact of the proposed legislative changes.

**Government:** reduced costs of operating the railways. The establishment of a new rail body, under Option 2, is expected to deliver savings to government through streamlining industry processes and avoiding duplication.

**Other key non-monetised benefits by 'main affected groups'**

**Businesses:** benefits from simplified market structure, improved decision making, and reduced costs.

**Consumers:** improved experience for passengers and operators (contracted, open access and freight) who will benefit from an integrated rail body with accountability to act as a strategic decision-making body and plan coherently for the future.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5%
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<sup>3</sup> Figures are rounded to the nearest £m.

<sup>4</sup> Figures presented here are high-level estimates of the financial costs and benefits of this overarching proposal, to demonstrate the scale of the impacts for the government. Figures are subject to change and are under review as part of the current business planning round.

This impact assessment quantifies some of the financial costs and benefits of structural reform. These financial costs and benefits are not exhaustive and there is substantial uncertainty associated with the figures presented, which are subject to change. The figures are based on early-stage policy and may not fully reflect changes to the proposals through the policy development cycle. Only high-level seven-year cumulative estimates are presented.

The figures presented here do not capture the costs and benefits of individual measures within the draft Bill. Instead, they take an overarching view, assessing the impact of establishing the IRB which legislative change allows for. This is largely due to the qualitative approach taken in individual impact assessments.<sup>5</sup>

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NQ	Benefits: NQ	Net: NQ	N/A

## Evidence Base

### Background

The government appointed independent chair Keith Williams to conduct a root-and-branch review of the railways after a chaotic timetable change in May 2018 which exposed the system's lack of leadership and co-ordination.

The Plan for Rail which followed, drew on this diagnosis, and recommended establishing a new public body to bring together track and train, and enable a more integrated railway. To achieve this integration, legislation will enable the Secretary of State for Transport to transfer certain franchising functions to the infrastructure manager and designate it as the Integrated Rail Body (IRB). The draft Bill also creates a statutory governance framework consisting of appropriate mechanisms that will enable Ministers to set direction, define what the IRB must do and hold it to account.

The creation of the role of IRB and the IRB governance framework will be the driving force behind a simpler industry structure that is adaptable to changing customer needs, working in close partnership with the private sector, including open access and freight operators, suppliers and innovators, to deliver a more efficient, modern rail system underpinned by easier collaboration and aligned incentives, generating value and savings that will have benefits for passengers and taxpayers. The governance framework will also need to consider how to regulate the IRB to protect the effective functioning of the rail industry, including the freight and open access operator markets and devolved passenger services.

Legislation will not change the powers, roles and responsibilities of the Scottish and Welsh Ministers. The IRB will own and take responsibility for the vast majority of the national network, as Network Rail does today and will take responsibility for Secretary of State franchised services. Legislation will create the opportunity for Scottish and Welsh Ministers to choose to delegate certain franchising functions for devolved passenger services to the IRB but will not require it.

There have previously been several non-structural initiatives aimed at dealing with some of the issues set out in this impact assessment, some of which are still in progress such as better alignment in decision making between Train Operators and Network Rail. However, increased alignment is largely focussed on operational and delivery issues rather than franchising specification which sits with the Secretary of State. DfT also generally coordinates efforts to ensure different parts of the sector are linked-up. Although there is scope within the current legal framework to deliver important early reforms, change to the fundamental separation of roles – where Network Rail is the infrastructure manager and the Secretary of State is the franchising authority – can only be addressed through primary legislation.

<sup>5</sup> A summary of the costs and benefits of each measure is set out in the Evidence Base section below and in greater detail in individual impact assessments (see Annex A-G).



Whilst these types of initiatives do help, they cannot fully address the key outcomes of the Plan for Rail, which draw on recommendations of the Williams Review, highlighting the need for structural reform to manage system risk and integration. Therefore, this impact assessment does not discuss these smaller-scale initiatives in detail, instead focusing on an assessment of the impacts of Option 1 (“Do Minimum”) and Option 2 (“Do Something”).

## **Problem under consideration and rationale for intervention**

The Williams Rail Review presented a clear diagnosis of the industry’s challenges and laid bare the fragmentation and lack of accountability within it. The Plan for Rail that followed presented a clear plan to unify the industry’s structure through an IRB.

This intervention is designed to address the following:

### **Fragmentation and accountability**

A central finding of the Plan for Rail was that the current fragmentation in the industry has led to a lack of joined-up decision-making across ‘track’ and ‘train’ at all levels, ranging from strategy to delivery of change and day-to-day operations. Too many decisions are limited by fragmented accountabilities, and the complex and often misaligned incentives, contracts and processes introduced to make the system function. Key impacts of fragmentation include:

- operational and financial inefficiency which result in non-optimisation of overall system value
- increased risk of operational and project delay/mismanagement
- reduced focus on passengers and freight customers.

The current system results in inefficiency due to lack of understanding of the structure of the sector. There is a lack of clear accountability, with uncertainty regarding who is responsible for areas such as integrated delivery or improving passenger experience. There are also misaligned incentives across the sector between different parties resulting in inefficient outcomes (e.g. reduced ability to respond to primary and secondary delays, which then impact on journey times of passengers). The proposal to establish a strategic decision-making body seeks to provide direction for the sector, coordinate change and make trade-offs between assets. In doing so, the proposal will reduce fragmentation, re-align incentives and therefore correct this market failure.

Fragmentation and lack of accountability can lead to negative externalities whereby there are spillover effects onto other parties such as passengers or operating companies.

## **Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)**

This impact assessment presents initial high-level estimates of the financial costs and benefits of this overarching proposal, to demonstrate the scale of the impacts for the government. However, estimates of the wider economic costs and benefits of the proposal are not quantified due to the difficulty and uncertainty involved with doing so. Instead, the costs and benefits of policy options for businesses and consumers are described qualitatively.

This proposal seeks to implement the recommendation of the Plan for Rail to establish an IRB. The proposed changes to legislation set out in the preferred option are pre-requisites for the establishment of the IRB and are not expected to impose significant direct costs on businesses. However, additional impact assessments for individual measures have been provided to support and demonstrate the impact of the changes (see Annex A-G). Furthermore, the overarching proposal is not expected to have significant distributional impacts or place disproportionate burdens on small businesses, in itself. Wider social, environmental and economic impacts associated with the proposed reforms have been considered qualitatively where appropriate.

## Description of options considered

In this impact assessment, the “Do Nothing” option assumes that no IRB is established, and the design of the rail sector remains as it was before the Plan for Rail.

Following the Plan for Rail, the Great British Railways Transition Team (GBRTT) was established to support the move towards Great British Railways, the designated IRB. It is currently supporting delivery of benefits achievable with minimal sector reform and in advance of legislation. Therefore, the “Do Nothing” option does not represent a likely scenario but is included as a benchmark against which to assess the costs and benefits of structural reform.

The “Do Minimum” option contains a number of possible approaches to improve collaboration within the existing industry structure. This would require decisions to be taken on the role of GBRTT and will involve taking some reform activity forward, but the full benefits would not be realised. Without primary legislation it will not be possible to create a more integrated system by moving key DfT franchising functions into the same body as the infrastructure manager) which is key to unlocking efficiencies and better outcomes for passengers. Legislation is essential to transfer the Secretary of State’s role as franchising authority for certain services to the IRB, creating a single point of accountability to provide the leadership when something goes wrong and to address cross-system challenges.

The options considered for this intervention are set out as follows:

- **Do Nothing:** No intervention to remedy the key structural issues identified in the Plan for Rail. This option would mean that no legislation is taken forward to establish the IRB and work would need to be done to reverse the work that had been done in preparation for an IRB.
- **Option 1 – Do Minimum (non-legislative measures):** Intervention short of legislation to improve collaboration and integrated decision-making within the existing rail structure. This option is sub-optimal in the longer-term. Whilst work to improve decision-making would be beneficial, it would not bring track and train together into a single body, end the fragmented industry structure or alter accountabilities.
- **Option 2 – Do Something (legislative measures):** Establishment of the IRB with legislative change (**preferred option**).

## Policy objectives

The Plan for Rail concluded that the creation of a new rail body is fundamental to addressing the issues identified by the Williams Rail Review. Without intervention, these issues will continue to have an impact across the rail sector, negatively affecting the customer (passenger and freight) experience and the cost of the railways to the government. Legislation will create the opportunity for a single point of accountability with respect to the Great British railways, to sit with the IRB, ending the blame culture of years past. It will ensure operational and infrastructure decisions are no longer made in silos, but co-ordinated in a way that puts the needs of customers first. Simpler structures and clear leadership will make decision-making easier and more transparent, enabling whole system efficiencies that will reduce costs and make it cheaper to invest. The proposed changes to legislation set out in this proposal are pre-requisites for the establishment of a single strategic decision-making body, which could not be achieved without government intervention.

The core objectives of the proposal to create the role of IRB are:

- **Integration of track and train:** Bringing decision making on infrastructure and operations together to end the fragmented industry structure and tackle misaligned incentives at the root of so many of the problems in the industry. It will ensure operational and infrastructure decisions are co-ordinated in a way that puts the needs of customers first.
- **Accountability:** Integrating track and train into one body will make accountabilities clear, providing customers with an IRB that has a governance regime designed to ensure that it acts in the interests of the customer and which is directly accountable to government. The Office for Rail

and Road (ORR) will continue to play a central role when track and train are integrated, providing whole-sector oversight that transparently holds the IRB and other railway businesses to account.

- **Strategic decision-making:** In achieving the above, the IRB will be equipped to provide strategic leadership and be better situated to take long-term decisions for the railway as a whole.
- **Financial sustainability:** The IRB will bring together finances for infrastructure and passenger services that are currently procured by the Secretary of State. Although funding for infrastructure and operations will be set through separate processes, the IRB will use integrated business planning to inform decisions around the allocation of costs to improve financial performance across the railway – creating the opportunity to drive efficiencies through reduced fragmentation and grow revenue through sensible investment.

## Summary and preferred option with description of implementation plan

The preferred option will be delivered following the introduction of primary legislation and wider governance arrangements to reflect the new sector structure. The IRB will be established, responsible for franchising on non-devolved franchise services and infrastructure, empowered by an enhanced remit across the railway, as set out in the Plan for Rail. The power to award and manage English and cross border franchises will be transferred from DfT to the IRB. Where possible, GBRTT's role in the sector will be progressively enhanced to support the introduction of the IRB when legislation has been introduced.

## Changes to Legislation

Current legislation creates separation between components of the railway and would prevent the IRB from planning and coherently managing track and train. Where necessary we will propose new legislation to remove this separation.

**New legislation** will, amongst other things, foster:

- **More accountability:** Bringing together the management of the network and the commissioning of passenger services into a new public rail body that puts customers first and delivers efficiency. The Secretary of State's franchising authority functions will be transferred to the IRB, ensuring that operational and infrastructure decisions are made in a co-ordinated way. The IRB will serve as the single point of accountability for the performance of the railway where previously it was split between Network Rail and the Secretary of State.
- **Greater efficiency:** Establishing the IRB will create a simpler industry structure. It will be adaptable to changing customer needs, working in close partnership with the private sector (including train operating companies, freight operators, suppliers and innovators) to deliver a more efficient, modern rail system underpinned by better collaboration and aligned incentives, generating value and savings that will have benefits for passengers and taxpayers.
- **Improved focus on customers through specific accessibility and freight duties:** Introducing specific duties in relation to accessibility and freight, set out in the IRB's licence, will ensure that accessibility on the railway is improved and the experience for disabled passengers is enhanced. Rail freight will be targeted for growth, recognising the sector's economic benefits and potential for expansion.

## Transfer of the Secretary of State's Franchising Authority to the IRB

Certain Secretary of State franchising powers will transfer to the IRB, but the Secretary of State for Transport will continue to retain approval rights for contract specifications and awards through the licensing, directions and guidance statutory framework created by the Bill. As part of the government's reforms, it is proposed that the previous franchise model will be replaced with new competed Passenger Services Contracts for the English and cross border franchises that the IRB will become franchising authority for. Whilst the change in the contracting approach itself is not contingent upon legislative

change this new commercial model for passenger services will enable additional commercial benefits not considered in this impact assessment.

In order to allow the IRB to operate as both an infrastructure manager and a franchising authority as envisaged, some minor amendments are necessary to the existing legislation governing the management of rail infrastructures. These changes, to regulations 14(9) and 19(4) of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, are required because, due to the level of control the IRB may have over its contracted operators, the IRB would be at risk of being in breach of these regulations on day one. Without these changes, the IRB may be required to establish a separate charging body, which would undermine the purpose of the reforms to bring the management of track and train together and create a strategic decision-making body for the railways.

## **Governance and Accountability Framework**

The new industry structure proposed by the Plan for Rail is intended to enable clearer accountability and stronger oversight. Roles and responsibilities must be clear to enable the new body to succeed as a strategic decision-making body for the railways and the Bill proposes creating a strong statutory governance framework consisting of appropriate accountability mechanisms. This will enable roles and responsibilities to be clearly defined, with accountability for infrastructure across the whole sector and operational delivery (for IRB contracted services) unified and residing in a single body. The new governance and accountability arrangements will also enable Ministers to set direction, define what the IRB must do and hold it to account. The ORR will continue in its role, providing a clear and consistent route for monitoring and enforcement.

## **Power for Scottish / Welsh Ministers to delegate devolved franchising authority functions to the IRB**

Legislation will enable the Scottish and Welsh Ministers to choose to delegate certain franchising functions for devolved passenger services to the IRB. This will be an optional power for Ministers in the Devolved Administrations and legislation will not require such delegation but enable it to happen should Scottish and/or Welsh Ministers choose to pursue it. The terms of any delegation would need to be mutually acceptable to ministers in the Devolved Administration(s), the Secretary of State and the IRB. In the absence of Ministers in the Devolved Administrations pursuing this option, the existing roles and responsibilities of the Scottish and Welsh governments will remain.

## **Monetised and non-monetised costs and benefits of each option**

The options appraisal within this impact assessment deals directly with the costs and benefits of, the overarching proposal, establishing the IRB. Additional measures that are contained within the draft Bill are set out in the annexes, and have their own respective cost and benefits assessment, including the regulatory provisions on Power to Amend (Annex F) and the Luxembourg Protocol (Annex G).

Quantitative analysis of the costs and benefits of structural reform for government was produced in collaboration with Network Rail and was carried out assuming that the IRB is established in legislation, as captured by the Do Something Option. Therefore, in this section we first present the costs and benefits of the Do Something option over the 7-year appraisal period (the IRB is established with legislation), and then qualitatively describe the costs and benefits of the Do Minimum option (non-legislative options), as quantitative analysis is not available for the latter. The figures are based on early-stage policy and may not fully reflect changes to the proposals through the policy development cycle. For example, costs and benefits of the Do Minimum and Do Something options do not account for costs associated with any work that would be required to reverse the preparation for an IRB under the Do Nothing option.

The level of detail presented in this document on the costs and benefits of structural reform is deemed proportionate in view of figures being high-level estimates of the financial costs and benefits of the overarching proposal rather than the direct impacts of regulatory change. Further, in places, it is not possible to include more detailed breakdowns due to commercial sensitivity of figures used. However,

the section on the Do Something option below sets out a summary of the methodological approach and explanation of key costs and benefits to government, businesses and consumers to provide an indication of the scale and nature of impacts of structural reform over a 7-year period.

## Do Something: Establishment of the IRB with legislative change (preferred option)

As above, figures relating to the Do Something option are initial high-level estimates of the financial costs and benefits of establishing the IRB. They do not capture the costs and benefits of proposed changes to legislation. These legislative changes, set out in the description of the preferred option, are pre-requisites for the establishment of the IRB. However, they are not expected to impose significant direct costs on businesses. To support and demonstrate the impact of these changes, some individual measures have been appraised separately in the additional impact assessments set out in the annexes and a summary table of impacts is included below.

This overarching impact assessment brings together elements of the draft Bill as a whole, however, as assessments have been largely qualitative and summary figures (e.g., the Equivalent Annual Net Direct Cost to Business (EANDCB)) have not been quantified for each measure we are not able to estimate these figures for this overarching assessment. Due to the qualitative approach to assessing the costs and benefits of each measure, and that each separate impact assessment treats relevant costs and benefits assuming little or no independence of each relevant parts of the programme, there is no risk of double counting impacts within summary figures.

The table below summarises the costs and benefits of the preferred option put forward in each of the impact assessments. Full quantitative appraisal has not been carried out due to the difficulty and uncertainty in doing so. However, where possible, high-level indicative figures have been included to provide a sense of scale for certain impacts, for example, familiarisation costs. To note, in accordance with RPC guidance regarding impact assessments supporting primary legislation, impacts of the whole policy have been considered i.e. the policy itself and any related secondary legislation.<sup>6</sup> Impact assessments will also be published alongside any future secondary legislation to capture costs and benefits.

**Table 1: Summary of key impacts in overarching and individual impact assessments<sup>7</sup>**

Impact Assessment	Costs	Benefits
<b>Draft Rail Reform Bill overarching impact assessment: Establishing a new Integrated Rail Body</b>	<p>Implementation costs for structural and commercial reform.</p> <p>Transition, branding and change management costs associated with setting up an IRB.</p> <p>Additional administrative costs occurring from legislative changes</p>	<p>Savings arising from streamlining industry processes and avoiding duplication.</p> <p>Benefits to businesses from a simplified market structure.</p> <p>Improved user experience for passenger and freight users.</p>
<b>Accessibility (Annex A)</b>  A requirement is placed in primary legislation for the scope of the IRB	<p>Cost of implementing legislation and familiarisation costs to operators and private companies.</p> <p>Cost to the IRB of establishing capability to adhere to the governance framework.</p>	<p>Greater accountability and visibility of accessibility policies from having one body (IRB).</p> <p>Improved value for money in decision-making regarding accessibility.</p>

<sup>6</sup> Monetisation is limited as it would rely on inherently uncertain and hypothetical scenarios of future regulatory interventions.

<sup>7</sup> Indirect and wider impacts of each measure are not captured here (see Annex A-G).

<p>licence to include a duty on accessibility.</p>	<p>Cost to the Office of Road and Rail (ORR) to monitor the duty of the IRB.</p> <p>Cost to the IRB of consultation with stakeholders.</p> <p>Cost to Disabled Persons Transport Advisory Committee (DPTAC) of expanded advisory role.</p>	
<p><b>Data (Annex B)</b></p> <p>The IRB is given statutory powers to disclose information obtained as franchising authority for the purpose of carrying out its functions or activities.<sup>8</sup></p>	<p>Cost to legal teams of drafting open data provisions into contracts.</p> <p>Cost of changing legislation and familiarisation costs of legislative changes.</p>	<p>Easier data sharing within the rail industry (i.e. improved collaboration).</p> <p>IRB able to disclose data to the public where appropriate.</p>
<p><b>Environment (Annex C)</b></p> <p>A requirement is placed in primary legislation for the scope of the IRB licence to include a duty on environment.</p>	<p>Cost of implementing legislation and familiarisation costs to operators and private companies.</p> <p>Cost to the IRB of establishing capability to adhere to the legislative framework set out.</p> <p>Cost to the ORR to monitor the duty of the IRB.</p>	<p>Greater value for money in environmental decision-making.</p> <p>Greater accountability of environmental policies.</p>
<p><b>ORR's Competition Duty (Annex D)</b></p> <p>Recast the ORR's Competition Duty in existing legislation to give consideration to public funding to access application decisions.</p>	<p>Familiarisation and potential additional administrative costs to the ORR, OAOs and wider government.</p>	<p>Increased opportunity to achieve Government's objective of promoting competition in the rail industry.</p> <p>Tax payer and public funding considerations given greater weight when making access decisions.</p>
<p><b>Amendment to Regulation 16 in the Access, Management and Licensing of Railway Undertaking Regulations 2016 (Annex E)</b></p> <p>Create an exemption from the regulations 16 of the 2016 Regulations to enable the transfer of</p>	<p>Administration and implementation costs of legislative changes to Government.</p> <p>Small and negligible costs associated with implementing this policy for operators contracted by SoS/IRB only.</p>	<p>Passenger service contracts are able to transfer from SoS to an IRB, facilitating progression of rail reform.</p> <p>TOCs contracted by IRB are able to continue under their current contracts whilst remaining in compliance with regulation 16.</p>

<sup>8</sup> This is via the permitted disclosure exemptions under the s145 (2). TOC contracts are also updated to explicitly recognise that the IRB has a right to disclose information obtained as franchising authority to facilitate the carrying out of its functions or activities.

franchising contracts to the IRB.		
<b>Power to Amend (Annex F)</b>  Include a power in primary legislation that enables Government to make amendments to rail markets regulation through secondary legislation.	Familiarisation costs for businesses for changes to primary and related secondary legislation. <sup>9</sup>  Administrative costs to operators and infrastructure managers for producing certain required information.  Potential ongoing operational costs and/or impacts on revenue for train and freight operating companies.	The benefits will be to railways operators and infrastructure managers, in terms of efficiency gains such as improved operational planning, and to passengers through a better passenger experience.  Benefits will be specific to the use of the power and will be outlined in future impact assessments.
<b>Primary power to implement the Luxembourg Rail Protocol (Annex G)</b>  Introduce a primary power to subsequently implement the Protocol through secondary legislation.	<i>NB – There are no costs at this stage. The following costs would be as a result of subsequent secondary legislation which implement the Protocol at a later stage:</i> Familiarisation costs for business in scope. <sup>10</sup>  Nominal charge to businesses which choose to use provisions in the Protocol to register international interest in the registry.  Potential nominal charge for to businesses which choose to use provisions in the Protocol for issuing a unique identification number for a vehicle.  Potential nominal charge for businesses which choose to use provisions in the Protocol for a plate to be attached to rolling stock.	Upholding HMG's reputation to wholly implement international agreements once it has signaled it will do so.  <i>NB – the following benefits would be expected to materialise at a later stage when secondary legislation is passed to implement the Protocol:</i>  Expected reduced risk for financiers and businesses who lease rolling stock.  Subsequently, expected reduced premiums for rolling stock.  As a further consequence, expected benefits of facilitating leasing arrangements, which open the market to new competition, provide more flexibility for operators and drive standardisation of equipment.

## Costs and Benefits to Government

In this section, we set out the value of costs and benefits to government under the Do Something option compared with the Do Nothing. Costs and benefits of structural reform have been estimated over a seven-year period. Due to uncertainty, costs and benefits are not assessed beyond this period as the future structure of the IRB is to be determined. However, costs and benefits of structural reform for government will extend beyond the 7 years assessed.<sup>11</sup> Therefore, the figures presented here should not be viewed as the total costs and benefits to government.

<sup>9</sup> Indicative familiarisation costs are included in the individual impact assessment using high-level assumptions.

<sup>10</sup> Businesses in scope include (rolling stock leasing companies (ROSCOs), TOCs, FOCs, and ORR). Indicative familiarisation costs are included in the individual impact assessment using high-level assumptions.

<sup>11</sup> The costs and benefits of structural reform presented here are based on a 7-year appraisal period. However, impact assessments for individual measures use the standard 10-year appraisal period (although quantification

The consultation stage impact assessment used a 5-year appraisal period. However, delays to the rail reform programme, as a result of external factors, meant that certain benefits to government would not be realised within the initial 5-year period, and would most likely be realised two years later than initially forecast. This meant a 7-year appraisal period was chosen instead for the final stage impact assessment. The appraisal period was extended, rather than pushed back by two years, because some of the costs and benefits have already been realised. This includes costs already incurred on implementing reform and benefits delivered from enhanced collaboration.

The range and scale of costs and benefits associated with reform will be dependent on the detailed design and operational functions of the IRB. These factors cannot be anticipated at this stage. This IA focussed on the primary impacts of an IRB, which relate to the functions and purposes set out in the draft bill. For this reason, the majority of costs and benefits presented are left unmonetised. Where possible, benefits have been monetised however these should be considered as high-level estimates at this stage.

## Costs to Government (Do Something v Do Nothing)

The key costs to government of the proposal include change management, external support, branding costs and transition costs relating to GBRTT. Beyond these transition costs, the ongoing costs associated with the IRB are uncertain but are not expected to substantially exceed current government costs associated with the delivery of rail operations and infrastructure.

The total costs of structural reform are estimated to be £381m over the 7-year period starting in 2022/23 (2023/24 prices, discounted).<sup>12</sup> This figure is based on bottom-up estimates of the expected costs of implementing the new operating model and the latest budget figures from GBRTT (to note: the costs and benefits from structural reform are being used for illustrative purposes as they include both legislative and non-legislative measures). There will be further costs to government that are incurred outside this seven-year period so this figure should not be viewed as the total cost to government.

There are likely to be additional administrative costs to establish the change in legislation. These include costs associated with external support and change management. Additionally, there may be a cost associated with renewing the IRB's licence, which will be renewed roughly every five years, alongside costs associated with implementing the levers of the new governance framework. These costs have not been quantified in this impact assessment but are expected to be relatively small. Via their consultation response, the ORR have indicated that there are likely to be additional resource costs to them in their increased monitoring role under the reformed rail system. The scale of this additional resource cost is currently uncertain.

### ***Streamlining Industry Processes***

There are several savings that could be achieved by streamlining industry processes. Examples of these benefits include:

- **More efficient use of the rail network.** Using the new industry framework created by the Bill, in addition to any future changes to relevant rail legislation, the IRB will be able to work towards using the rail network more efficiently.

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and monetisation of most benefits have not been possible given the uncertainty around implementation of policies supporting the reform programme).

<sup>12</sup> This figure has been derived from figures agreed with HM Treasury at the 2021 Spending Review and updated with actual costs incurred by GBRTT where possible. Figures are subject to change and are under review as part of the current business planning round.



- **More efficient possession planning.** In having responsibility for the whole industry profit and loss, the IRB will be able to plan more efficiently. In doing so, this will generate efficiencies in the cost of infrastructure works.
- **Implementing industry standards efficiently.** In taking a whole system view, the IRB can implement complex industry standards more consistently. It will have more direct control and influence across the system to drive adoption of standards.
- **Efficiencies relating to the use of digital technology, data services, IT and insurance.**

### ***Avoiding Duplication***

The fragmented nature of the current industry structure inherently means that there are many different industry bodies with different accountabilities and functions. A lack of clarity over roles and responsibilities between organisations has resulted in some duplication across the sector and consolidating many of these functions into one organisation will lead to financial savings. For example, currently DfT and Network Rail both have substantial planning, strategy and policy roles, which will largely be brought into one organisation under the IRB, although some clienting function may remain. There may also be savings from a reduction in duplication of some management roles which currently exist between organisations.

High level estimates of the savings to government of the Do Something compared with the Do Nothing have been developed. The cumulative 7-year benefits of structural reform are set out in Table 2 below.

**Table 2: 7-year cumulative benefits of structural reform (Do Something v Do Nothing)**

<b>£m, 23/24 prices, discounted</b>	<b>7-year cumulative benefits</b>
Streamlining Industry Processes	851
Avoiding Duplication	106
<b>Total</b>	<b>957</b>

The estimates have been developed using a bottom-up analysis of potential opportunities for government savings. These are consistent with top-down estimates of the total savings that can be made based on examples of savings made within industry. The estimates take into account the benefits that are directly attributable to the establishment of a new rail body and do not include other benefits of wider policy reform. These benefits have been developed by examining potential benefits of rail reform and identifying cost efficiencies, drawing on a broad range of data and case studies. These figures also exclude benefits attributable to the move to new Passenger Service Contracts because these benefits are not contingent on the establishment of the IRB. The savings presented here ramp up towards the end of the 7-year period and are expected to continue accruing to government beyond the 7-year period, with benefits exceeding costs on an ongoing annual basis. Some savings are expected to increase after year 7 as the full annual benefits of reform are realised.

### **Costs to Businesses**

- **Transition costs:** the establishment of the IRB may impose some short-term adjustment costs as businesses familiarise themselves with the new structure of the rail sector.
- **Ongoing costs:** this proposal is not expected to impose any substantial direct ongoing costs on businesses. It is possible that this proposal may lead to indirect costs that affect businesses, such as through its impacts on competition for IRB let franchise agreements, but these do not follow directly from the establishment of the IRB.

## **Benefits to Businesses**

- Businesses will benefit from a simpler market structure through creating the role of the IRB. Simplification will provide a clearer set of incentives for businesses and will make it easier for businesses to make optimal decisions.
- The IRB is expected to facilitate the introduction of simpler passenger service contracts for its contracted services, which will reduce the costs and barriers to entry for bidders.

## **Costs to Consumers**

This proposal is not anticipated to impose any substantial costs on consumers.

## **Benefits to Consumers**

The IRB is expected to improve the experience for passengers and freight users through its ability to take a whole system view, addressing the fragmented accountabilities in the current system, as outlined in the Plan for Rail. The IRB will end the current fragmentation and bring accountabilities together which will allow it to set direction for the industry as a whole to drive improvements for rail users. The IRB will:

- Bring decision making on infrastructure and operations together, re-aligning incentives to address operational and financial inefficiencies in the current system and reduce the risk of operational and project delay/mismanagement (e.g. the reduced ability to respond to primary and secondary delays, which then impact on journey times of passengers).
- Make accountabilities clear, providing customers with an IRB that has a governance regime designed to ensure that it acts in the interests of the customer, which is directly accountable to government and ensures that passengers and freight customers know who is in charge.
- Improve freight co-ordination on a national level. The value this benefit will bring will depend upon the extent to which the IRB successfully promotes access for freight on the network, including the incentive structure it implements. Given the early stage of development, this can be factored into its design.

## **Do Minimum: Intervention short of legislation to improve collaboration and integrated decision-making within the existing rail structure**

The Do Minimum scenario will produce costs and benefits compared with the Do Nothing scenario in which there is no structural reform. These costs and benefits are described qualitatively in this section and are later compared to the costs and benefits anticipated in the Do Something scenario to indicate the expected costs and benefits of the proposed changes to legislation.

## **Costs to Government**

The costs to government in the Do Minimum option will vary depending on policy decisions taken forward to enhance collaboration. In some scenarios where less is done the cost will be significantly less than those described in the Do Something scenario and in others they will be of similar value.

## **Benefits to Government**

As for the Do Something, the benefits of the Do Minimum to government are expected to derive from streamlining industry processes and avoiding duplication. However, the scope of these reforms without legislation is subject to uncertainty and is still being developed. We have assessed that while there are savings that are wholly dependent on legislation and that would not be realised under the Do Minimum, there are also a number of savings that could be achieved through improved working in the current structural context. Where these savings exist, it is assumed that they would be enhanced by legislation.

It is expected, based on assessments made by DfT and Network Rail, that benefits from avoiding duplication could, in part, be delivered without legislation. For example, through greater collaboration between DfT and Network rail or through consolidation of duplicated duties within one organisation where the current legal framework allows. However, benefits from streamlining industry processes, which make up the majority of benefits over the 7-year period, are likely to be more difficult to deliver without the proposed legislation. This is because a new body would not have full control of decisions that could drive improved cost-effectiveness and would rely on other organisations with different duties to drive changes. None of these reforms have been enacted over the past two decades without an IRB. Enabling reforms without legislation may also result in complex governance structures, which could risk the extent to which these benefits are achieved.

## **Costs and benefits to consumers and businesses**

The costs to customers and businesses of the Do Minimum option are expected to be qualitatively similar to those described for the Do Something option. However, as for the benefits to government, the benefits to consumers and businesses are expected to be smaller in the Do Minimum than the Do Something. This will vary depending on the specific approach taken.

## **Incremental Costs and Benefits of Proposed Changes to Legislation (Do Something v Do Minimum)**

The incremental costs and benefits of establishing the IRB with additional legislative change, compared with the Do Minimum, are set out qualitatively as follows.

### **Costs to Government**

The costs of the Do Something option as compared to the Do Minimum will vary dependent on the choices taken within the Do Minimum option. In some cases this will mean the additional costs with establishing the IRB will be small and in others it will be larger.

### **Benefits to Government**

The establishment of the IRB with additional legislative change will increase its ability to drive forward change. Today's legislative structures restrict the integration of track and train, a key benefit of the Plan for Rail. The proposed change to legislation will remove key existing separations between components of the railway and will therefore increase the scope of the IRB to plan and act coherently across track and train. Without legislation, no single rail body would have control of decisions that could drive improved cost effectiveness.

## **Costs and Benefits to Consumers and Businesses**

It is expected that the full benefits of structural reform to consumers and businesses are likely to be achieved only through legislative reform. Therefore, the benefits to businesses and consumers are expected to be greater under the Do Something than the Do Minimum scenario.

Therefore, there are expected to be significant incremental benefits of establishing the IRB with additional legislation changes, and these benefits are expected to substantially outweigh the incremental costs of establishing the IRB in legislation. As a result, the Do Something is preferred to the Do Minimum option.

## **Direct costs and benefits to business calculations**

The direct costs and benefits to business of this proposal are limited:

- **Costs:** the establishment of the IRB is not expected to impose any substantial direct costs to business beyond the initial costs of becoming familiar with the updated design of the sector, and costs relating to the indirect impacts of establishment. Any costs to business of the proposal are unlikely to result from the changes in legislation to establish the IRB.
- **Benefits:** there are likely to be benefits to businesses as a result of a simplified industry structure, but the size of these benefits is highly uncertain and has not been quantified in this impact assessment. As with the costs to business, it is unlikely that there will be significant benefits to business resulting from changes in legislation.

The options appraisal in this impact assessment relates to the overarching proposal for establishing the IRB. The initial high-level estimates of the financial costs and benefits of establishing the IRB do not directly relate to regulatory changes. Therefore, this impact assessment does not include an Equivalent Annual Net Direct Cost to Businesses (EANDCB) or a Business Impact Target (BIT) score.

The impacts on businesses of this proposal are likely to be indirect, through changes to the structure as a result of the establishment of the IRB.

## Risks and assumptions

### Analytical risks and assumptions

There is uncertainty in the cost and benefit figures contained in this impact assessment and they are subject to change. This high-level analysis combines analyses conducted in separate impact assessments, and as such is an amalgamation of different types of monetised and non-monetised benefits and costs. Such aggregation has the risks of the sum of parts not necessarily fully reflecting the impact of the whole programme when implemented.

The figures are based on early-stage policy and may not fully reflect changes to the proposals through the policy development cycle. At this stage, figures have only been presented to underpin the costs and benefits to government of the Do Something option compared with the Do Nothing option. Costs and benefits of the Do Something compared with the Do Minimum have been summarised using only very high-level indicative analysis.

The figures associated with the costs and benefits of the Do Something option are based on analysis, commissioned by Network Rail and developed by consultants. The objective of this analysis was to review the potential benefits of rail reform and identify cost efficiencies and revenue increases that could be achieved with a new industry structure and the introduction of a new rail body to act as a strategic decision-making body for the sector. The project was developed in collaboration with industry experts and drew on a broad range of data and case studies, however, as it was conducted before the pandemic, figures are subject to some uncertainty.

### Policy risks

#### Risks relating to the new legislation

The legislative framework for the railway is a complex landscape, with numerous legislative packages creating this framework. This includes both railway-specific legislation and wider legislative requirements that apply to the railway. By making changes to the existing legislation, there is a risk that it may produce unintended consequences or interact negatively with other wider legislation. This risk is being mitigated through consultation and wider engagement, and utilising expert advice.

The success of the IRB as a strategic decision-making body for the railway will be dependent not only on new legislative changes, but changes in the culture of the industry. This cannot be legislated, and so will need strong engagement, leadership and a clear and shared vision to achieve.

The policy objectives of the Plan for Rail may not be achieved in full if changes made in legislation are not adequately reflected in the non-legislative governance structures across the sector.

## Risks relating to the new governance framework

The new governance framework is intended to ensure that the IRB successfully delivers the objectives of the Plan for Rail. If the framework does not effectively enable clearer accountability and stronger oversight of the sector, then that will impact the IRB's ability to deliver these objectives. A key risk is around the balancing of Secretary of State's ability to point the IRB towards policy priorities with its freedom to operate the railway effectively. Substantial work has been undertaken to develop the proposed governance framework to ensure it delivers on its objectives.

## Risks relating to the transfer of franchising authority functions to the IRB

We are seeking to ensure an enhanced role for the private sector through delivery of these reforms and the IRB will be responsible for creating the right commercial conditions for the sector and ensuring the benefits of competition for passengers and taxpayers, including attracting bidders for passenger services contracts and creating opportunities for private sector investment and innovation across the rail sector. The prohibition on public sector operators to compete for contracts for passenger services will remain in place.

## Impact on small, micro and medium businesses

This overarching proposal is not expected to have a significant impact on small, micro, or medium businesses with up to 499 employees. As set out above, the direct costs to businesses of this proposal are not expected to be significant.

As this proposal involves a change to the structure of the sector, it is not possible to exempt small, micro, or medium businesses (i.e., those with 499 or fewer employees). However, where these businesses may face costs as a result of this proposal, these costs are unlikely to disproportionately or unduly affect such businesses. Further detail on the impact of individual measures on small, micro and medium businesses is presented in the individual impact assessment accompanying each measure (see Annex A-G).

TOCs have been identified as a group that will be impacted by this proposal. Whilst there are many more organisations that will be impacted, it is useful consider the employee size of different TOCs. This should not be treated as an exhaustive list of organisations impacted by this proposal. The following table shows the size of franchised TOCs operating in the market, by number of employees<sup>13</sup>. The average TOC has several thousand employees and far exceeds the 499 employees medium business threshold. Only one TOC has below the 499 employees threshold, however as previously stated, this proposal is not expected to have significant impacts on small, micro or medium businesses. With the exception of Eurostar, (who we estimate to employ 1600 people), non-franchised operators generally have fewer employees, as shown in Table 3<sup>14</sup>. These TOCs therefore make up those businesses that would be considered in the 50 – 499 medium business category.

**Table 3: number of TOC employees**

Train operating company	Number of employees
Govia Thameslink Railway*	7,245
Northern Trains*	6,912
Great Western Railway*	6,185
South Western Railway*	5,217
ScotRail	4,968
Southeastern*	4,481
Avanti West Coast*	3,297
London North Eastern Railway*	3,240
TfW Rail	2,993

<sup>13</sup> Table 2233 - Full-time equivalent (FTE) employees by operator, as of March 2023. <https://dataportal.orr.gov.uk/statistics/compendia/toc-key-statistics/>

<sup>14</sup> Table 2233 - Full-time equivalent (FTE) employees by operator, as of March 2023. <https://dataportal.orr.gov.uk/statistics/compendia/toc-key-statistics/>

West Midlands Trains*	2,948
Greater Anglia*	2,792
East Midlands Railway*	2,410
CrossCountry*	1,854
TransPennine Express*	1,602
London Overground	1,505
Elizabeth line	1,277
Merseyrail	1,225
Chiltern Railways*	866
c2c*	639
Caledonian Sleeper	198

\*DfT contracted TOCs

**Table 4: number of TOC (open access) employees**

Train operating company (open access)	Number of employees
Heathrow Express <sup>15</sup>	169
Grand Central	142
Hull Trains	104
Lumo	100

## Wider impacts

The establishment of the IRB is expected to play a facilitating role in enabling wider benefits. Many of these are set out in the Plan for Rail<sup>16</sup>.

- **Equalities:** The establishment of the IRB may indirectly positively affect equalities. The new rail body will have the ability to drive improvements in equality, such as by improving accessibility, across the rail industry. Please see the 'Accessibility' impact assessment in Annex A.
- **Environment:** Similarly, the IRB will have the opportunity to instigate system wide improvements in the sector's environmental impact, which is one of the 10 key outcomes set out in the Plan for Rail.<sup>17</sup> Additionally, as rail is a low emission transport sector, mode shift from more polluting forms of transport to rail will result in benefits to the UK's emission levels. By improving the experience for passengers and freight users, this proposal could support mode shift to rail, though it is unclear the extent to which this will take place.
- **Innovation:** Chapter 7 of the Plan for Rail sets out proposals for 'accelerating innovation and modernisation' – the IRB will become the primary funder of research, development and innovation initiatives for the rail sector and will lead the delivery of these projects. The establishment of the IRB is therefore expected to facilitate innovation within the rail sector.<sup>18</sup>
- **Other Economic Impacts:**
  - A network with improved performance which attracts more passengers could bring wider economic impacts. Improved connectivity generates agglomeration benefits and positive

<sup>15</sup> Heathrow Express operates services on an open access basis but on the basis of a bespoke access and contractual regime agreed pre-privatisation, which is quite distinct from other operators on the network.

<sup>16</sup> Williams-Shapps plan for rail. <https://www.gov.uk/government/publications/great-british-railways-williams-shapps-plan-for-rail>

<sup>17</sup> Williams-Shapps plan for rail, p. 22. <https://www.gov.uk/government/publications/great-british-railways-williams-shapps-plan-for-rail>

<sup>18</sup> Williams-Shapps plan for rail, Chapter 7. <https://www.gov.uk/government/publications/great-british-railways-williams-shapps-plan-for-rail>

employment impacts.<sup>19</sup> Improved network performance would also deliver benefits for freight users and leisure passengers.

- New Passenger Service Contracts (PSCs) are expected to reduce barriers to entry for bidders and raise competition in the rail industry. While PSCs are not strictly dependent on legislation and the establishment of the IRB - and therefore are not included in the cost or benefit estimates in this impact assessment - a strategic decision-making body as envisioned under our preferred option would nonetheless help facilitate benefits associated with PSCs. Providing clarity and a timeline for the sector's structural arrangements will allow the procurement of PSCs on a sustainable basis. The IRB will play this role and aim to have competition for all contracts and to receive more competitive bids.<sup>20</sup>

An IRB responsible for track and train can identify opportunities within the network to better utilise the private sector and the efficiencies it can bring, including open access services.

## **A summary of the potential trade implications**

The establishment of an IRB is not expected to have any implications for trade. Though rail supply chains are international this Bill simply transfers certain Secretary of State franchising functions to the IRB which will then continue to be carried out by the IRB.

## **Monitoring and Evaluation**

DfT is currently developing a structured benefits management approach to measure, monitor and report on the progress of the Programme. Further work to scope additional evaluation activity, involving an evaluation scoping study to assess data requirements and explore impact evaluation methods, is ongoing. Evaluation of the reforms is likely to draw on a range of data sources, such as passenger surveys and internal monitoring data, as well as bespoke data collection.

Given the proposed changes in this impact assessment are minor and of a technical nature, we do not consider a separate post-implementation review plan to be proportionate. The proposed changes will be evaluated as part of broader rail reform.

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<sup>19</sup> Rail Delivery Group. [https://www.raildeliverygroup.com/files/Publications/2017-10\\_benefits\\_of\\_investment\\_in\\_rail.pdf](https://www.raildeliverygroup.com/files/Publications/2017-10_benefits_of_investment_in_rail.pdf)

<sup>20</sup> Plan for Rail, p. 59. <https://www.gov.uk/government/publications/great-british-railways-williams-shapps-plan-for-rail>

# Annexes



<b>Title: Accessibility</b> <b>Lead department or agency:</b> Department for Transport <b>Other departments or agencies:</b> N/A			<b>Impact Assessment (IA)</b>	
			<b>Date:</b> January 2024	
			<b>Stage:</b> Final	
			<b>Source of intervention:</b> Domestic	
			<b>Type of measure:</b> Primary legislation	
			<b>Contact for enquiries:</b> railreform.bill@dft.gov.uk	
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> Not applicable	
<b>Cost of Preferred (or more likely) Option (in 2019 prices)</b>				
<b>Total Net Present Social Value</b>	<b>Business Net Present Value</b>	<b>Net cost to business per year</b>	<b>Business Impact Target Status</b>	
NQ	NQ	NQ	Not a regulatory provision	
<b>What is the problem under consideration? Why is government action or intervention necessary?</b> Most railway stations in Great Britain were designed during the Victorian era, meaning that despite recent efforts to improve accessibility or build new stations to accessible design standards, a lot of the rail estate remains below accessible standards. An urgent need to improve how accessibility is delivered on the railway was acknowledged in the Plan for Rail <sup>21</sup> , which identified ‘accessibility’ - the need for passengers to access the network as easily as possible - as one of nine core passenger needs. The establishment of the Integrated Rail Body as the strategic decision-making body of the rail industry will provide it with considerable power over the planning and management of the railways. It is therefore necessary to ensure the appropriate legal and policy framework exists to ensure it has the correct incentives to enable the accessibility ambition as set out in the Plan for Rail.				
<b>What are the policy objectives of the action or intervention and the intended effects?</b> The policy objectives are to: (i) stimulate positive changes in the current culture surrounding accessibility; (ii) drastically improve the way accessibility is administered across the network; and (iii) lead to an improved passenger offer. A transformed passenger experience will be the most fundamental indicator of success. The creation of a publicly-owned body subject to an accessibility duty presents a vital opportunity: establishing a strategic decision-making body for accessibility – with the power to make meaningful, long-term change across the network – will ensure that disabled passengers and those with additional needs are put at the heart of the railway.				

<sup>21</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/994603/Great British Railways-williams-shapps-plan-for-rail.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994603/Great_British_Railways-williams-shapps-plan-for-rail.pdf)

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details below)**

**Do nothing:**

- The Integrated Rail Body is not required through any mechanism – e.g. neither through primary legislation nor the licence – to improve accessibility on the railways (other than to comply with existing equality duties and regulations).
- The Integrated Rail Body is still subject to the Public Sector Equality Duty (PSED) and any further legal requirements stemming from its day-to-day activities e.g. accessibility design standards where applicable.
- The Disabled Persons Transport Advisory Committee (DPTAC) retain their role as statutory advisor to the Secretary of State for Transport.

**Do something:**

- A specific accessibility duty on the Integrated Rail Body is established.
- *There are options, described below, for the mechanism by which this is created.*
  - **Option 1** - the duty is established in primary legislation
  - **Option 2** - the duty is established in the Integrated Rail Body licence, which is enforced by the rail regulator
  - **Option 3** - a combination of 1 and 2. A requirement is placed in primary legislation for the scope of the Integrated Rail Body licence to include a duty on accessibility (**preferred option**)
- The role of DPTAC is expanded in primary legislation to become a statutory advisor to the Integrated Rail Body, as well as to the Secretary of State.

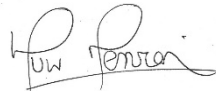
*The proposals relate to the legislative changes required to ensure the Integrated Rail Body is established with the appropriate framework to fulfil a strategic decision-making role on accessibility in rail. They are not direct proposals for accessibility upgrades on the network, although the ambition is that will be the indirect effect of the changes proposed.*

**Will the policy be reviewed? Yes If applicable, set review date: TBC**

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A		<b>Non-traded:</b> N/A	

***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 by the responsible Minister:



Date: 20/02/2024

# Summary: Analysis & Evidence

## Policy Options 1, 2 and 3

**Description:** A specific accessibility duty is established on the Integrated Rail Body and the role of DPTAC is expanded in primary legislation to become a statutory advisor to the Integrated Rail Body.

### FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: NQ

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	NQ		NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

**Description and scale of key monetised costs by ‘main affected groups’**  
No costs have been monetised for this IA.

**Other key non-monetised costs by ‘main affected groups’**

- Cost of implementing legislation and familiarisation costs to operators and private companies.
- Cost to the Integrated Rail Body of establishing capability to adhere to legislative framework set out.
- Cost to ORR of monitoring the licence condition on the Integrated Rail Body.
- Cost to the Integrated Rail Body of consultation with stakeholders, including DPTAC.
- Cost to DPTAC (incurred by the DfT) of expanded advisory role.

*These apply under all duty implementation options*

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low				
High	N/A			
Best Estimate	NQ		NQ	NQ

**Description and scale of key monetised benefits by ‘main affected groups’**  
No benefits have been monetised for this IA.

**Other key non-monetised benefits by ‘main affected groups’**

- Greater accountability for delivery of accessibility policy.
- Improved decision-making regarding accessibility across the industry.
- Greater focus on accessibility in decision-making leading to passenger and operator benefits.
- Wider societal and economic benefits of accessibility improvements.

*These apply under all duty implementation options*

<b>Key assumptions/sensitivities/risks</b>			<b>Discount rate</b>	N/A
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- There is a risk that the policies fail to lead to a change in behaviour. This might arise if:
    - Compliance, monitoring and evaluation framework surrounding the duty is not sufficiently robust, allowing the Integrated Rail Body to not comply with measures set out.
    - The duty doesn't drive cultural change.
    - The Integrated Rail Body only undertakes the minimum required consultation with accessibility stakeholders and does not go beyond this.
  - Under **Option 1**, there is a risk of a loss of flexibility on the statutory duty. This includes making the duty more specific or amending it if policy objectives change.
  - Under **Option 2**, while it creates a mechanism for the regulator to hold the Integrated Rail Body to account via the licence, there is a risk that an accessibility duty could be excluded from future Integrated Rail Body licences. There is also a risk that the lack of obligation to include an accessibility duty in primary legislation reduces confidence among industry and passengers that the IRB will be committed to accessibility improvements long-term.
- Option 3** balances both these risks by retaining flexibility for future decision-makers through including the duty in the Integrated Rail Body's licence rather than in primary legislation itself, whilst containing a requirement in primary legislation to continue to include a duty in the licence acts as a signal of government's commitment to longer-term accessibility policy. **Option 3 is therefore the preferred option.**

#### BUSINESS ASSESSMENT (Options 1, 2 & 3)- Not applicable

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NQ	Benefits: NQ	Net: NQ	
			N/A

# Evidence Base

## Background

This impact assessment supports the Rail Reform Bill which takes forward legislative measures on reforms to the rail industry, following the publication of the Plan for Rail White Paper.<sup>22</sup>

### The Integrated Rail Body

As set out in the overarching impact assessment, the Secretary of State will issue a licence to the IRB. The licence will set out accountabilities for 'what' the IRB does and 'how' it does it. The ORR will be responsible for monitoring Great British Railways' compliance with the licence across the whole of Great Britain.

### Accessibility

The IRB will be accountable for complying with the accessibility duty. Accessibility on the railways, encompassing the need for passengers to access the network as easily as possible, has improved considerably in recent decades. Initiatives such as dedicated accessibility funds (including Access for All<sup>23</sup>), accessibility design standards, the introduction of the Public Sector Equality Duty (PSED)<sup>24</sup> and Accessible Travel Policies (ATPs) have advanced the development of stations and mandated assistance availability for passengers with disabilities to board and change trains. These advances have been made despite the considerable challenge that most railway stations in Great Britain were designed during the Victorian era.

The Williams Rail Review highlighted the challenges that still remain and hinder a truly accessible network. Accessibility was identified in the Plan for Rail as one of nine core passenger needs and includes several accessibility commitments including:

- A new duty on the Secretary of State to include a specific accessibility duty in the IRB licence (included in the bill).
- Developing and consulting on a National Rail Accessibility Strategy (to be delivered by a future IRB)
- A reformed role for ORR and Transport Focus, where ORR will hold the IRB to account for any accessibility obligations, and Transport Focus will champion interests, identify concerns, and escalate issues to the Secretary of State.
- An audit of network accessibility.
  - An accessibility audit of all railway stations in Great Britain has been completed. While the audit has been led by DfT, we propose that ownership is transferred to the IRB in the end state.
- An update of design standards for stations (is being consulted on separately).

This IA considers the policies which require legislative change. This includes the Plan for Rail commitment to a new accessibility duty, alongside an expansion of DPTAC's advisory role to also incorporate the IRB.

## Current roles and responsibilities in the rail industry on accessibility

In the rail industry today, no single organisation is responsible for the accessibility of the network. Rail industry bodies have different roles and responsibilities in setting direction, monitoring and enforcement on accessibility.

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<sup>22</sup> <https://www.gov.uk/government/publications/great-british-railways-williams-shapps-plan-for-rail>

<sup>23</sup> <https://www.networkrail.co.uk/communities/passengers/station-improvements/access-for-all-improving-accessibility-at-railway-stations-nationwide/>

<sup>24</sup> <https://www.gov.uk/government/publications/public-sector-equality-duty>

The following sections look to provide a summary of key roles and responsibilities in the industry on accessibility today.

*Please note that this is intended as a high-level summary and does not go into detail on each organisation's role.*

## DfT

The DfT, as the current Franchising Authority, except where these powers are devolved, has a variety of controls on accessibility, which it does primarily through franchise agreements.<sup>25</sup> If TOCs breach their accessibility obligations, the DfT can formally launch enforcement proceedings.

The DfT publishes several accessibility standards, which the rail industry must adhere to where applicable. These include the Design Standards for Accessible Railway Stations. Train operators and rolling stock owners must comply with the legal requirements in either the National Technical Specification Notices (NTSNs) for heavy rail vehicles, or the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 (RVAR 2010), for light rail. The ORR, as an independent regulator, plays an important role in monitoring and enforcing compliance against these standards where appropriate. The RSSB also plays a role, including in the change management process of NTSNs.<sup>26</sup>

*Accessibility standards for rolling stock are covered by separate existing law. See Rail vehicle accessibility | Office of Rail and Road (orr.gov.uk)<sup>27</sup> These duties can be bolstered by contractual obligations by the relevant franchising authority.*

## The ORR

The ORR has an important role in accessibility policy. Under ORR's operating licences, each individual train and station operator is required to establish and comply with an Accessible Travel Policy (ATP), based on ORR's published ATP's guidance.<sup>28</sup> Each ATP must be approved by ORR. An ATP sets out, amongst other things, the arrangements and assistance that an operator will provide to protect the interests of disabled people using its services and to facilitate such use. As per the licence condition, ORR can require licence holders to submit their ATP for review and, in extreme cases, can revoke the licence of an operator that is not complying with its ATP.

## The Rail Ombudsman

The Rail Ombudsman offers a free service to investigate unresolved complaints about participating service providers, including complaints about accessibility issues. The Ombudsman looks to resolve customers complaints, which can involve passing the complaint to another body where they believe it can be resolved more effectively.

## Transport Focus

Transport Focus works to support improved accessibility on rail, to ensure that the views of passengers with disabilities are driving change. Transport Focus's activities include meeting regularly with rail companies, the industry and the DfT to discuss accessibility matters – including ATPs. Alongside this, Transport Focus undertake research on accessibility and are consulted on exemptions from the regulations on train and station design.<sup>29</sup>

## Network Rail (NR)

NR owns, operates, and develops Britain's railway infrastructure, including building, maintaining and updating stations. NR also manage 20 UK stations, with the remaining managed by TOCs.<sup>30</sup> The railway

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<sup>25</sup> [Rail franchising - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/topics/rail-franchising)

<sup>26</sup> <https://www.rssb.co.uk/en/standards/understanding-and-applying-standards/national-technical-specification-notices>

<sup>27</sup> <https://www.orr.gov.uk/guidance-compliance/rail/health-safety/passenger-safety/rail-vehicle-accessibility>

<sup>28</sup> <https://www.orr.gov.uk/sites/default/files/2021-03/September%202020%20ATP%20Guidance%20final.pdf>

<sup>29</sup> <https://www.transportfocus.org.uk/faq/passenger-focus-and-accessibility/>

<sup>30</sup> <https://www.networkrail.co.uk/who-we-are/about-us/>

infrastructure is vital to the accessibility of the network. As examples of NR's work in this area, NR maintain the built environment of the railways, including the installation, renewal or replacement of station infrastructure or facilities in compliance with accessibility design standards and deliver Access for All projects to improve the accessibility infrastructure at selected stations.<sup>31</sup>

## Problem under consideration

Despite recent efforts to improve the accessibility of the railways, there are several obstacles that hinder progress. These include:

- i. **Infrastructure:** Most railway stations were designed during the Victorian era, meaning completing accessibility improvements are often very expensive, difficult due to the age of the buildings and they are often listed. Infrastructure improvements are also challenging due to fragmentation of ownership, inaccurate data, challenges with enforcement of existing standards, and an inefficient investment strategy. Infrastructure shortfalls, including a lack of appropriate toilet facilities and a lack of priority seating, can create a barrier to rail travel for disabled passengers<sup>32</sup>. This results in financial and social consequences (as set out below).
- ii. **Lack of long-term strategy and misaligned accessibility objectives:** There is an absence of a comprehensive plan to improve the accessibility of the railway – including and beyond addressing the challenges with the built environment. The absence of a clear strategy, with defined objectives and backed by a long-term investment programme, leads to misaligned activities across the network. This is compounded by the multiple organisations involved in setting, regulating, and enforcing accessibility standards (see previous section). This creates blurred responsibilities and a lack of accountability, making accessibility changes difficult to promote and deliver.
- iii. **Discrepancies in data collection:** The data on the accessibility of the network is inconsistent. There are both gaps in knowledge and discrepancies across different data sets. A lack of understanding makes it difficult to plan in the long-term, specifically, where to direct investment.
- iv. **Limitations surrounding the culture of accessibility:** Anecdotal evidence suggests that accessibility is not treated as a high priority across the industry i.e. a fundamental requirement of the railway and the passenger offer. TOCs and Station Owners can be reluctant to push for accessibility improvements as incentives and guidelines are ambiguous. Staff training and attitudes towards disabled passengers and those with additional needs can also fall short.

The above has culminated in a railway system with inconsistent and disjointed accessibility provisions which often do not meet the level required for disabled passengers and those with additional needs to travel by rail with confidence. Accurate information is not currently readily available on the proportion of stations which are inaccessible, the now-completed accessibility audit of stations has gathered data and will be used to address this and provide great accuracy or passengers. Research carried out by the DfT found that two thirds of disabled rail users surveyed experienced at least one issue at some point during their rail journey, and 21% of disabled rail users found travelling by rail “difficult” or “very difficult”.<sup>33</sup>

The arguments for an accessible railway, including the significant economic and societal benefits, are long-established. The government, through the Plan for Rail, has set a strong commitment to improve accessibility. The Integrated Rail Body, as the strategic decision-making body for the industry accountable for the passenger offer, presents a key opportunity for much-needed leadership and accountability on accessibility.

The introduction of these policies will impact the day-to-day running of the IRB. It will also, therefore, impact on those contracted to provide services across the network. Most importantly, it will have a direct

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<sup>31</sup> [Access for All – improving accessibility at railway stations nationwide - Network Rail](#)

<sup>32</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/814862/experiences-of-disabled-rail-passengers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814862/experiences-of-disabled-rail-passengers.pdf)

<sup>33</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/814862/experiences-of-disabled-rail-passengers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814862/experiences-of-disabled-rail-passengers.pdf)

impact on passengers, including and beyond disabled passengers and those with additional needs e.g. parents with buggies and passengers with shopping or luggage.

## **Rationale for Intervention**

The rationale for intervening to address the issues as set out in the previous section is driven by two market failures: that there are positive externalities associated with accessibility improvements, which operators do not consider when making decisions about how accessible to make stations and trains, as well as a coordination failure across the different bodies who run the railways.

It is well documented that there is a wider social value to accessibility improvements as well as a financial benefit to the operators who deliver them. Financial benefits arise from increased fare revenue and reduced operational costs, and operators would account for these benefits in undertaking an analysis of the commercial value of a potential intervention. Wider social benefits, such as improved social inclusion, improved health from more active travel and greater worker mobility do not accrue to the operator. Without intervention accessibility provisions would be undersupplied.

Under the current industry structure, there is a coordination failure in that the industry is fragmented – there is no single point of accountability for accessibility on the rail network with no single entity responsible for delivering improvements. The establishment of the IRB as the strategic decision-making body of the industry will create that one point of accountability and give it considerable power over the planning and running of the railways. It is therefore necessary to ensure the appropriate legal and policy framework exists to ensure it has the correct incentives to enable the accessibility ambition as set out in the Plan for Rail.

## **Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)**

The changes proposed will largely impact a new publicly owned government body or private companies who sign up to working with it. It is not expected there will be direct impacts on businesses outside of these (including any disproportionate impacts on small or micro businesses) or any significant distributional impacts between sectors. Additionally, the changes proposed are setting out the framework for accessibility policy under the new industry structure and the resulting impacts will largely depend on how these changes are applied. The range of uncertainty of these impacts is significant.

At this stage we have not attempted to quantify or monetise the impacts of the changes for proportionality reasons. We have supplemented this IA with evidence from published studies carried out on the impacts of accessibility in the wider impacts section.

## **Description of options considered**

### **Do nothing:**

The Integrated Rail Body is not required through any mechanism (e.g. neither through primary legislation nor the IRB licence) to improve accessibility on the railways.

In the 'Do Nothing' scenario, the IRB will be established without any specific framework to promote and require accessibility improvements on the network. It would therefore not become a single point of accountability for accessibility.

In this scenario, however, the IRB would be subject to the Public Sector Equality Duty (PSED), which would continue to apply to bodies including the DfT, ORR and Network Rail. The Integrated Rail Body would also



be subject to further legal requirements stemming from its day-to-day activities e.g. subject to accessibility design standards where applicable.<sup>34</sup>

As today, DPTAC retain their role as statutory advisor to the Secretary of State for Transport.

### **Do Something (preferred option):**

A specific accessibility duty is placed on the IRB and the role of the Disabled Persons Transport Advisory Committee (DPTAC) is expanded in primary legislation to become a statutory advisor to the IRB, as well as to the Secretary of State.

#### Accessibility duty

The Plan for Rail proposes that a duty will be placed on the IRB to improve accessibility. This new duty is fundamental to cultural change, ensuring that the IRB puts accessibility at the core of its strategic decisions when acting as a strategic decision-making body for the industry on accessibility. This duty is in addition to the Public Sector Equality Duty (PSED), which will apply to the IRB

The detail of the duty, including how it will function, is still under development and will be consulted on as part of the IRB licence.

There are differing options available for the mechanism used to establish this accessibility duty on the IRB, including:

- **Option 1** - the duty is established in primary legislation
- **Option 2** - the duty is established in the IRB licence
- **Option 3** - a combination of 1 and 2. A requirement is placed in primary legislation for the scope of the IRB licence to include a duty on accessibility (**preferred option**)

This is discussed in the implementation plan section below.

Alongside the Secretary of State, ORR and Transport Focus will work closely together to secure improvements on the network. ORR will monitor the Integrated Rail Body's compliance with accessibility requirements in the IRB licence, as well as other operators' compliance with their licences. Transport Focus will work in close partnership with ORR, acting as a voice for disabled passengers and those with additional needs.

#### A statutory requirement to consult with accessibility stakeholders

We propose that the role of the Disabled Persons Transport Advisory Committee (DPTAC) is expanded in primary legislation to become a statutory advisor to the IRB. Established by the Transport Act 1985, DPTAC is the statutory advisor to the government on matters relating to disability and transport. By acting as a critical friend and policy advisor, DPTAC has ensured accessibility is prioritised in the Department for Transport. We believe that DPTAC will have an equivalent, highly positive impact on the IRB.

## **Policy objectives**

The intended outcomes of the of accessibility reforms include:

- i. **Cultural change:** evidence that the IRB is putting accessibility at the centre of its strategic decisions. This is alongside evidence that rail bodies are also prioritising accessibility in wider decision-making.

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<sup>34</sup> See: <https://www.gov.uk/government/publications/accessible-railway-stations-design-standards>, <https://www.gov.uk/government/publications/railway-interoperability-national-technical-specification-notices-ntsns>, and <https://www.orr.gov.uk/guidance-compliance/rail/health-safety/passenger-safety/rail-vehicle-accessibility>

- ii. **Infrastructure:** an improvement in the physical accessibility of the network, stemming from the IRB's commitment to, and culture around, accessibility.
- iii. **The passenger offer:** an improvement in journeys for disabled passengers and those with additional needs – having the ability to travel to, in and around stations and beyond with ease. This is evidenced by an increase in passenger journeys.

The key indicators of success include:

- i. An increase in journeys made by disabled passengers and those with additional needs.
- ii. An improvement in the experience of disabled passengers and those with additional needs when travelling by rail.
- iii. A reduction in intervention/enforcement in this area.

The true indicator of success, however, is that accessibility is prioritised throughout the industry: a railway where accessibility is thought of, not as a 'nice to have' but as a 'must do' i.e. it is an integral part of the day-to-day running of the network.

## Summary and preferred option with description of implementation plan

We propose that the requirement for the Integrated Rail Body to consult with DPTAC is established in primary legislation. We also propose to place an accessibility duty on the Integrated Rail Body within the IRB licence. The draft IRB licence will be subject to a future consultation. The preferred Option for the mechanism by which the accessibility duty on the IRB is implemented is using a combination of primary legislation and the IRB licence - placing a requirement in primary legislation on the Secretary of State to ensure that the licence (a more flexible mechanism than primary legislation) contains an accessibility duty.

Under any Option, the IRB will have clear obligations on accessibility. In the end state, the IRB will be responsible for delivering the Plan for Rail vision for accessibility day-to-day, and the legislative framework proposed should ensure the IRB's robust compliance framework on accessibility. The intention is that the accessibility duty would enable the IRB to elicit support from contracted operators to achieve accessibility outcomes.

To make early progress, the DfT has commissioned Great British Railways Transition Team to begin work on the accessibility commitments where possible.

## Monetised and non-monetised costs and benefits of each option (including administrative burden)

The Options presented in this IA are comprised of measures aimed at achieving the policy objectives as set out above.

Given that the proposed changes will be laid in primary legislation (where legislation is required), **quantitative analysis has not been carried out** due to the high-level nature of the changes. Analysis of the impacts of the changes will continue to be carried out throughout the policy development process.

To note it is not expected that there will be a difference in costs and benefits between Options 1, 2 and 3, but a potential difference in deliverability and risks, which are discussed in the risk section below.

**Option 3 is the preferred Option** because it is considered to balance these risks and best meet the policy objectives.

### Direct Costs- All Options

- Cost of implementing legislation and familiarisation costs to operators and private companies
  - This is expected to be a small cost. The changes are not regulatory so private businesses will not be required to change their behaviour.

- Cost to the IRB of establishing capability to adhere to the governance framework set out (duty on accessibility in the IRB licence and consulting with accessibility stakeholders)
  - The detail of the structure of teams within the IRB which will deliver these has yet to be decided but capability will be required to adhere to the new duty.
- Cost to ORR of monitoring the duty on the IRB
  - The ORR already fulfils a monitoring role when it comes to operator licences. The specific responsibilities of ORR are still under development, and this monitoring role will form part of a wider reformed role for the ORR. This will predominantly be an administrative cost.
- Cost to the IRB of consultation with stakeholders, including DPTAC
 

At this stage of policy development, it has not yet been specified what form this will need to take but will incur a cost to the IRB. Work will continue to develop the analysis of this cost as the requirement is further specified.
- Cost to DPTAC (incurred by the DfT) of expanded advisory role
  - DPTAC are the DfT's statutory advisors on accessible travel. Their role will be expanded to also advise the IRB which will incur a cost to the DfT who manage their contracts.
  - This is not expected to be a significant cost as their role in advising the IRB will likely be similar to the advice given to the DfT.
  - DPTAC have advised they do not expect there to be a significant resource cost associated with the changes but note the uncertainty around this.

## Direct Benefits- All Options

- There will be greater accountability and visibility of accessibility policies
  - Having one body accountable for accessibility across the network, bound by legislative requirements on accessibility, brings greater accountability to, and improvements on the network.
- Improved value for money in decision-making regarding accessibility
  - The fragmentation of accessibility policy means that decisions on accessibility are often taken in silos, and not with a view of the whole sector in mind. The Integrated Rail Body will be able to take a system-wide view when making decisions, leading to improved value for money in decision-making as they will be better placed to assess trade-offs and where best to invest in accessibility improvements which will yield the most considerable benefits.

## Risks

### *Options 1, 2 and 3*

- The compliance, monitoring and evaluation framework surrounding the accessibility duty is not sufficiently robust, allowing the Integrated Rail Body to not comply with the measures set out to sufficiently drive the substantial change desired.
- The duty doesn't drive cultural change. Accessibility is not given sufficient priority across the whole industry (i.e. by all bodies and operators) and put at the heart of the network as envisioned.
- The IRB only undertakes the minimum required consultation with accessibility stakeholders and do not strive to go beyond this i.e. the value of consultation is not fully exercised.

### *Risks of Option 1*

- Dependent on the drafting of the new duty, there could be limited flexibility under this option where it is established itself in primary legislation. This includes making the duty more specific (i.e., specifying a framework, the current option proposes a more general duty), or amending it if policy objectives shift.

### *Risks of Option 2*

- Under Option 2, where the duty is included in the IRB licence, there will be more flexibility to amend it. However, the lack of any reference to an accessibility duty in primary legislation (a more permanent mechanism) could mean an accessibility duty is excluded altogether in future.

This could limit the confidence the sector has in the long-term commitment to accessibility improvements and reduce passengers' confidence in government's commitment to accessibility improvements.

Under Option 3, it will be established in primary legislation that the IRB licence must address accessibility. This mitigates the risk included under Option 2 of accessibility being excluded from the licence and retains a signal to the sector of the government's commitment to accessibility policy, whilst retaining flexibility for future decision-makers over what the scope of the accessibility requirement should look like (which establishment itself in primary legislation would not provide). **Option 3 is therefore the preferred option.**

## Mitigations

- A robust compliance framework is being designed, with defined roles and responsibilities for ORR, Transport Focus and the Secretary of State to hold the IRB to account and secure improvements on the network, taking into account where franchising authority arrangement will be different in Scotland and Wales and noting that arrangements with Open Access Operators are also different.
- We are consulting on the different mechanisms to create the new duty, to ensure all benefits and disadvantages have been considered.

## Assumptions

Assumption that the IRB is established with the powers and remit envisioned in the Plan for Rail, and acts as a strategic decision-making body for the industry.

## Indirect & Wider Impacts

The combination of policies above should provide the legal, policy and compliance framework to improve accessibility on the rail network. This section discusses the potential wider impacts of improved accessibility in rail.

We would expect the IRB to identify accessibility improvements that are likely to lead to increased costs, to operating companies or to the IRB itself, of providing accessible services. These costs would be funded either directly by the public purse or indirectly via the rail operation contracts. There could also be indirect costs to businesses in the supply chain where accessibility improvements are identified, as with any upgrade work which occurs on the rail network.

Embedding accessibility considerations in decisions across the network should lead to a greater focus on accessibility in decision-making, which should lead to both passenger and operator benefits. It is widely acknowledged that improving accessible transport brings many wider societal and economic benefits as well as financial returns.

Research was carried out for DfT<sup>35</sup> on the benefits Network Rail's Access for All<sup>36</sup> programme, which since 2006 has installed accessible, step-free routes at over 150 stations and implemented smaller-scale improvements at a further 1,500 stations<sup>37</sup>. The study, completed in 2015 found that upgrades across six stations resulted in a Benefit-Cost Ratio of 2.4:1 (i.e. for every £1 spent there were £2.40 of benefits), when accounting for impacts on disabled passengers and those with additional needs. This varied considerably between stations, with Vauxhall having an exceptionally high BCR of 11.3:1 whilst others had very low BCRs closer to 0:1. The key identified drivers for differences in these BCR measures were the number of disabled passengers and those with additional needs using the station, as well as the

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<sup>35</sup> "Access for All Benefit Research", Steer Davis Gleave, 2015, <https://uk.steergroup.com/sites/default/files/2021-03/Access4AllBenefitResearch2015.pdf>

<sup>36</sup> <https://www.networkrail.co.uk/communities/passengers/station-improvements/access-for-all-improving-accessibility-at-railway-stations-nationwide/>

<sup>37</sup> <https://www.gov.uk/government/collections/access-for-all-programme> (updated 2019)

number stating that Access for All had led them to increase their use<sup>38</sup> (as this assessment was based in part on user interviews). This overall BCR was robust to multiple sensitivity tests, the lowest being 1.44:1. A sensitivity test where benefits to passengers without accessible needs was included, the BCR came out at 19:1.

An OECD report<sup>39</sup> looking to improve an understanding of accessibility benefits (of transport generally, not rail specifically) identified a number of different types of benefit from improved accessible transport, listed below:

- User benefits- investment in accessibility results in similar user benefits as other transport interventions (travel time reduction, greater service quality, improved safety).
- Non-user benefits<sup>40</sup>- including decongestion on other modes, property value uplift and option value.<sup>41</sup>
- Operator benefits- increased revenue from an uplift in passenger numbers and cost reductions due to disabled passengers and those with additional needs being able to access transport independently rather than relying on assistance personnel.
- Public sector benefits- from additional labour force participation, and for disabled passengers and those with additional needs greater participation in social and economic activities, like access to health, education and leisure services and reduced psychological problems from social isolation.

The report also notes accessibility improvements can give rise to negative economic benefits. Wheelchair-dedicated spaces can reduce capacity, contributing to crowding, and leave less space for luggage or bicycles. There may also be trade-offs between different groups of passengers e.g. tactile paving for visually impaired passengers can make it more difficult for wheelchair users to access rail platforms.

## Direct costs and benefits to business calculations

It is not expected that there will be any direct costs or benefits to business under proposals in this IA and the changes are not regulatory. The proposals will result in costs to the government and public bodies.

This includes small, micro and medium businesses, who are not expected to incur any costs as a result of the changes proposed.

There may be indirect costs to businesses as a result of the action taken by the IRB to adhere to the measures set on accessibility. It is not expected this would disproportionately affect small, micro and medium businesses.

## A summary of the potential trade implications of measure

This proposal relates to domestic rail passenger travel and is therefore not expected to have any implications for trade.

## Monitoring and Evaluation

DfT is developing a structured benefits management approach to measure, monitor and report on the progress of the Programme. We are also progressing further work to scope additional evaluation activity, which is likely to involve an evaluation scoping study to assess data requirements and explore impact evaluation methods. Evaluation of the reforms is likely to draw on a range of data sources, such as passenger surveys and internal monitoring data, as well as bespoke data collection.

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<sup>38</sup> Depends to a large extent on users awareness of improvements

<sup>39</sup> "Economic Benefits of Improving Transport Accessibility", 2016, International Transport Forum, <https://www.itf-oecd.org/sites/default/files/docs/economic-benefits-improved-accessibility-transport-systems.pdf>

<sup>40</sup> Refers to benefits of those whose behaviour does not change as a result of the investment

<sup>41</sup> Option value- value derived from having the option of using accessible transport, even if they do not do so at present. E.g. for when it might be needed in future if decision to have children or in older age

Given the proposed changes in this impact assessment are minor and of a technical nature, we do not consider a separate post-implementation review plan to be proportionate. The proposed changes will be evaluated as part of broader rail reform.

## Annex B

<b>Title: Data</b> <b>Lead department or agency:</b> Department for Transport <b>Other departments or agencies:</b> N/A	<b>Impact Assessment (IA)</b>
	<b>Date:</b> January 2024
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
<b>Contact for enquiries:</b> railreform.bill@dft.gov.uk	
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Not applicable

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
NQ	NQ	NQ	Not a regulatory provision

### What is the problem under consideration? Why is government action or intervention necessary?

The Plan for Rail committed to an “open by default” approach to data sharing in order to better inform journeys, improve transparency, unlock innovation and bring new entrants into the rail market. Among its priorities, the IRB will need to make strategic decisions within its remit to promote open data in the interest of the public. This will require the IRB to use and disclose data that it obtains (via the franchise contracts it will enter into with TOCs) in its new capacity as franchising authority under the Railways Act 1993 (the “**Act**”) where there is wider value to the public and industry in doing so.

As a general rule, the Act provides for confidentiality by prohibiting the disclosure of information about any business without the consent of the business concerned. The franchise contracts with the TOCs also contain provisions relating to confidentiality. However, the Act also provides some exemptions to the confidentiality obligation, including to allow the Secretary of State or the ORR (among others) to make disclosures for the purpose of facilitating their functions or activities in relation to the railways.

Intervention is required to extend the power of disclosure under the Act to the IRB (alongside a recasting of contractual provisions) to enable it to disclose data that it obtains as franchising authority under the Act so it can achieve its open data policy objectives. It is intended that any disclosure of information by the IRB will recognise that railway undertakings that are not contracted to the IRB in its role as a franchising authority operate under different market conditions. Any data collected from those passenger and freight operators will therefore generally be excluded from this “open by default” approach.

### What are the policy objectives of the action or intervention and the intended effects?

To ensure that data obtained through the franchise contracts by the IRB under the Act can be disclosed as appropriate in order to improve decision-making at all levels. As the body overseeing the railway, the IRB will require the ability to use and disclose data that it obtains from TOCs through its role as franchising authority in order to effectively plan rail services, allocate investment and resources, and ensure the efficient running of the railways. This will support the open data objectives set out in the Plan for Rail, to accelerating innovation by enabling third parties to develop new data-driven tools and services for the industry and its passengers.

### What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

**Do nothing** - Do not intervene to change the legislation or contracts with regards to confidential information and data sharing. As a result, although the IRB would theoretically have a contractual right to disclose certain limited information that TOCs share with the IRB as franchising authority, the IRB would nonetheless be bound by the legislative confidentiality obligations under s145(1) of the Act and therefore information cannot be shared further or published by the IRB without the TOC's consent.

**Option 1 (non-legislative option)** – Introduce revised confidentiality provisions into new TOC contracts (the future PSCs) to establish consent for the IRB to disclose specified information. This will ensure that the IRB may disclose some TOC information more openly, but outside of those contractually agreed disclosures the IRB will remain bound by the confidentiality obligation under s145(1) of the 1993 Act. This Option limits the IRB to only disclosing TOC data pursuant to consent provisions in the contracts. It does not allow the IRB to disclose wider industry or other data obtained independently from or beyond the scope of the contract.

**Option 2 (preferred option)** – The IRB are given statutory powers to disclose information obtained as franchising authority under the Act for the purpose of carrying out their functions or activities, via the permitted disclosure exemptions under s145 (2). This would give the IRB a clear statutory right to make broad information disclosures. The amended section 145 does not override either the Access Management Regulations or the Competition Act insofar as they apply to the disclosure of data.

Under option 2, TOC contracts will continue to explicitly recognise those statutory powers and there will be further market engagement on the changes to the confidentiality provisions in the contract to facilitate achievement of the open data objective while respecting genuinely sensitive information and existing legal safeguards e.g. in relation to data protection and competition law. **This is the preferred option.**

**Will the policy be reviewed? Yes. If applicable, set review date: TBC**

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	<b>Micro</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
	Yes	Yes	Yes	Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

***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 by the responsible Minister:



Date: 20/02/2024



# Summary: Analysis & Evidence

## Policy Option 1

**Description:** Non-legislative option of introducing revised provisions into TOC contracts with consent for specified information disclosures.

### FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: NQ

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ		NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

**Description and scale of key monetised costs by 'main affected groups'**  
No costs have been monetised

**Other key non-monetised costs by 'main affected groups'**

- There are costs associated with the legal drafting of open data provisions within contracts.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ		NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

**Description and scale of key monetised benefits by 'main affected groups'**  
No benefits have been monetised

**Other key non-monetised benefits by 'main affected groups'**

- The IRB will be able to share data more openly in certain circumstances, leading to improved collaboration across the industry, efficiency improvements from more joined up operational delivery and improved insights to support planning and investment decisions.
- The IRB will have contractual powers to publish certain types of TOC data (as agreed in contractual relationship) openly, improving transparency for the public.

Key assumptions/sensitivities/risks	Discount rate
<ul style="list-style-type: none"> <li>When bidding for contracts, operators may price the disclosure of data (e.g. the cost of establishing new data transmission processes) into their bids, which could result in additional costs to the IRB via higher contract prices.</li> <li>The extent to which disclosures would have any unforeseen negative impacts is unknown and would need to be assessed by the IRB prior to any disclosures.</li> <li>There will be limitations for the IRB in disclosing data where disclosures must be defined and agreed within the contracts, reducing the IRB's ability to make ad-hoc disclosures (e.g. in response to arising issues).</li> <li>There could be legal challenge brought by a TOC against the IRB if it seeks to disclose information where express consent has not been obtained under the TOC contract.</li> </ul>	N/A

### BUSINESS ASSESSMENT (Option 1)- not applicable

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: NQ	Benefits: NQ	Net: NQ	

## Summary: Analysis & Evidence

## Policy Option 2

**Description:** The IRB is given statutory powers to disclose information obtained as franchising authority under the Act, for the purpose of carrying out its functions or activities, via the permitted disclosure exemptions under the s145 (2). TOC contracts are also updated to explicitly recognise that the IRB has a right to disclose information obtained as franchising authority to facilitate the carrying out of its functions or activities.

### FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)			
			Low:	High:	Best Estimate: NQ	
COSTS (£m)		Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low		NQ		NQ	NQ	
High		NQ		NQ	NQ	
Best Estimate		NQ		NQ	NQ	
Description and scale of key monetised costs by ‘main affected groups’						
No costs have been monetised						
Other key non-monetised costs by ‘main affected groups’						
<ul style="list-style-type: none"><li>There are costs associated with the legal drafting of open data provisions within contracts.</li><li>Cost of changing legislation and familiarisation costs of legislation changes</li></ul>						
BENEFITS (£m)		Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low						
High						
Best Estimate		NQ		NQ	NQ	
Description and scale of key monetised benefits by ‘main affected groups’						
No benefits have been monetised						
Other key non-monetised benefits by ‘main affected groups’						
<ul style="list-style-type: none"><li>The IRB able to share TOC data flexibly with other parties, leading to improved collaboration within the industry, efficiency improvements from more joined up operational delivery and improved insights to support planning and investment decisions.</li><li>The IRB will have statutory powers to disclose TOC data with flexibility, improving transparency for the public.</li></ul>						
Key assumptions/sensitivities/risks					Discount rate	N/A
<ul style="list-style-type: none"><li>When bidding for contracts, operators may price the disclosure of data (e.g. the cost of establishing new data transmission processes) into their bids, which could result in additional costs to the IRB via higher contract prices.</li><li>The IRB may use statutory powers to disclose information that could have unforeseen negative impacts e.g. damage to reputation or loss of passenger trust.</li></ul>						

### BUSINESS ASSESSMENT (Option 2)- not applicable

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: NQ	Benefits: NQ	Net: NQ	

# Evidence Base

## Background

This impact assessment supports the Rail Reform Bill which takes forward legislative measures on reforms to the rail industry, following the publication of the Plan for Rail White Paper.

The IRB will need the ability to access, use and share data that it obtains as franchising authority under the Act appropriately across the industry, with the government and with third parties to support decision-making.

As technologies become more advanced, the data that is produced also becomes more abundant and can be harnessed to drive more intelligent tools and services, as well as provide a more robust evidence base for decisions. Data is being used in smart ways across many sectors and the opportunities for the rail sector to leverage its data are significant. Customers are increasingly expecting services that are convenient, informed and personalised. Additionally, the industry is already collecting a wealth of data that can help to support improvements such as driving cost efficiencies or improving the capacity and reliability of the network. In order to take advantage of these opportunities, data that is obtained by the IRB as franchising authority must be used and shared in a coordinated and collaborative way across the industry.

In its role as franchising authority, the Integrated Rail Body will have access to data from TOCs under the franchise agreements to build intelligent tools using data and perform data analysis to support decision-making. It will also be reliant on private sector expertise to support these types of innovations. Under the new industry structures, the Integrated Rail Body will be reliant on this data to make decisions on issues such as affordability, performance and capacity, and in doing so will need the flexibility to disclose data and insights openly.

## Problem under consideration

The Plan for Rail committed to an “open by default” approach to data sharing in order to better inform journeys, improve transparency, unlock innovation and bring new entrants into the rail market. This will give the opportunity for GBR and the operators under its remit to make better business decisions and work more effectively with partners. Among its priorities, the IRB will need to make strategic decisions within its remit to promote open data in the interest of the public. This will require the Integrated Rail Body to use and disclose data that it obtains (via franchising contracts it will enter into with TOCs) in its new capacity as franchising authority under the Railways Act 1993 (the “**Act**”) where there is wider value to the public and industry in doing so.

As a general rule, the Act provides for confidentiality by restricting disclosure of information about any business without the consent of the business concerned. The franchising contracts with the TOCs also contain provisions relating to confidentiality. However, the Act also provides some exemptions to the confidentiality obligation, including to allow the Secretary of State or the ORR (among others) to make disclosures for the purpose of facilitating their functions or activities in relation to the railways.

## Rationale for intervention

To address this challenge, this legislation will extend the exemptions in s145(2) of the Act to the IRB to make disclosures and promote data sharing in the interest of the public.

Enabling the Integrated Rail Body to promote open data will improve the planning and operation of the railways, in particular for issues where collaboration is required across organisations. Data can also be used to better inform passenger journeys and provide better digital services. Without the flexibility to disclose data where it sees value in doing so, the IRB could be unable to make the most efficient and beneficial decisions for the sector and passengers. Intervention is necessary to ensure disclosures can be made, while respecting scope of appropriate parameters (for example recognising potential limitations

to disclosure such as data protection, competition issues, and genuine commercial interests that will be the subject of market engagement with contracted TOCs).

## **Policy objective**

The key objective is to enable access to valuable sources of rail data obtained by the IRB under the Railways Act 1993 for those who require it, within appropriate parameters. As the strategic decision-making body for the rail industry, the Integrated Rail Body will be well placed to make decisions on the disclosure of information that will maximise the benefits to the rail industry and passengers.

## **Description of options considered**

### **Do nothing**

Do not intervene to change the legislation or contracts with regards to confidential information and data sharing. As a result, although the Integrated Rail Body would have a contractual right to disclose certain limited information that contracted TOCs share with the Integrated Rail Body as franchising authority, the Integrated Rail Body would nonetheless be bound by confidentiality obligations under s145 (1) of the Act and therefore information cannot be shared further or published by the Integrated Rail Body without the contracted TOC's consent.

### **Option 1 (non-legislative option)**

Introduce revised confidentiality provisions into new franchising contracts (the future PSCs) to establish consent for the Integrated Rail Body to disclose specified information. This will ensure that the Integrated Rail Body may disclose some TOC information more openly, but outside of those contractually agreed disclosures the Integrated Rail Body will remain bound by the confidentiality obligation under s145(1) of the 1993 Act.

### **Option 2 (preferred option)**

The Integrated Rail Body is given statutory powers to disclose information obtained as franchising authority under the Act for the purpose of carrying out their functions or activities, via the permitted disclosure exemptions under s145 (2). This would give the IRB a clear statutory right to make broad information disclosures. The amended section 145 does not override either the Access Management Regulations or the Competition Act insofar as they apply to the disclosure of data. Under option 2, franchising contracts will continue to explicitly recognise those statutory powers and there will be further market engagement on the changes to the confidentiality provisions in the contract to facilitate achievement of the open data objective while respecting genuinely sensitive information and existing legal safeguards e.g. in relation to data protection and competition law.

## **Summary and preferred option with description of implementation plan**

As above, the preferred option is to extend the existing statutory disclosure gateway to the Integrated Rail Body under the Railways Act 1993 s145 (2), to disclose data for the carrying out of its functions or activities. TOC contracts will be updated to recognise this statutory gateway to facilitate achievement of the open data objective.

## **Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)**

At this stage, quantified impacts of the proposals are not included as they are too uncertain and will depend upon how the Integrated Rail Body chooses to use the proposed new power.

The analysis of the impact of the policy option pursued will continue to be monitored.

## Impacts of Proposed Options

As described in the section above, in this impact assessment costs and benefits have not been quantified or monetised. This section therefore describes the non-monetised costs and benefits, we expect to arise from the proposed changes.

Below describes the direct impacts (costs and benefits of each option), against a Do Nothing scenario, as well as the risks and assumptions underpinning the two options.

### Direct Costs- Options 1 & 2

#### Cost to legal teams of drafting open data provisions into contracts

- Compared to a Do Nothing scenario, there will be costs of both Option 1 and Option 2 for legal teams to set out the data sharing provisions within TOC contracts.
- These are anticipated to be minimal, particularly in the context of the wider contract drafting.

### Direct costs- Option 2 only

#### Cost of changing legislation and familiarisation costs of legislation changes

- There will be costs associated with bringing legislation to parliament and for companies within the sector to familiarise themselves with the new legislation. This is not regulatory legislation so companies will not be required to change their behaviour. This is expected to be a minimal cost.
- The proposed amendment to legislation is not intended to impact open access and freight operators, but instead will apply to information obtained by the IRB under the Act (e.g. through its role as a franchising authority). However, as a matter of good practice we are keen to encourage other players in rail to adopt open data.

### Direct Benefits - Options 1 & 2

#### Benefits of easier data sharing within the rail industry

- Under Option 1, open data will be broader compared to the Do Nothing scenario due to new open data specifications set within contracts. This will mean that the Integrated Rail Body can share such data under the consent exception to confidentiality in s145(1) of the 1993 Act (while it would be bound by that confidentiality under the Do Nothing scenario). Option 1 will not allow flexibility because disclosures will be limited to the specification within the contract.
- Under Option 2, the Integrated Rail Body will have the flexibility provided by a statutory power to disclose data obtained under the 1993 Act for the purpose of carrying out of its functions or activities as a franchising authority.
- The COVID-19 pandemic has highlighted the need for effective data sharing between different parts of the rail industry, for example to understand the number of people using the rail network and how the sector is recovering from the pandemic. The Integrated Rail Body will take a strategic decision-making approach to encourage cooperation across the sector for the benefit of the railway as a whole.
- Enabling the Integrated Rail Body to share data will improve collaboration across the industry and with third parties that store or hold contracted TOC data, leading to efficiency improvements through joined-up operational delivery and improved performance, as well as providing access to new insights to support long-term planning and investment decisions.

#### Benefits of the Integrated Rail Body being able to disclose data to the public where appropriate

- The changes proposed would give the Integrated Rail Body flexibility to share or publish information openly where it is appropriate.
- Under Option 1, the Integrated Rail Body will seek further contractual powers to disclose information, by seeking consent for broader disclosures.
- Under Option 2, the Integrated Rail Body would have statutory powers to disclose information for the purpose of carrying out their functions, which will be reflected within TOC contracts, giving them flexibility to disclose data for the purposes of carrying out its functions or activities. Option 1 will not allow for disclosures of information beyond that agreed in the contract.

## Risks and assumptions

### Assumptions

The analysis of costs and benefits is based on the assumption that contracted TOCs do not currently commercialise data and the proposed changes detailed in this impact assessment will not have a material impact on the commercial position of a TOC.

### Risks & Mitigations

#### Do nothing

The following would continue to be challenging:

- Data sharing is required to develop and deliver a coherent network-wide strategy that ensures an efficient and commercially viable railway. Without the ability to share comprehensive data across the network, due to the absence of a statutory s145(2) gateway (Option 2) or a contractual consent to disclose (Option 1), the IRB may be prevented from sharing data openly, which could limit its ability to make informed decisions.
- For the railway to operate effectively, the Integrated Rail Body must work in close collaboration with its delivery partners, including train operators. Without open data sharing practices, it will become challenging to plan for and respond to events on a day-to-day basis where coordination is required.
- There is also an opportunity cost resulting from a failure to fully capture the value of open data, for example where third parties can add value by using raw data to build operational management tools and analytical tools to improve decision-making, or apps to help passengers plan their journeys more effectively.

In order to help mitigate the risks above, engagement with TOCs is key to establishing a collaborative working relationship.

#### Option 1

- When bidding for contracts (Passenger Service Contracts), operators may price the disclosure of data (e.g. the cost of establishing new data transmission processes) into their bids, which could result in additional costs to the Integrated Rail Body via higher contract prices.
- Under Option 1, the types of data which are permitted to be disclosed would need to be defined within the contract and are subject to the market engagement with potential contract bidders.
- This benefit would be more limited compared to Option 2, as the Integrated Rail Body would have less flexibility in disclosing data if it was not defined in contracts (and might have to seek consent to make any unforeseen disclosures of TOC data that is not specified in the contract). Unprecedented events like COVID-19 have demonstrated the need to be flexible as a need to disclose information cannot always be known in advance.
- If the Integrated Rail Body is not given contractual powers to disclose information, there may be a risk of legal challenge where the Integrated Rail Body seeks to disclose information where it has not been given express consent to do so within the TOC contracts.

#### Option 2

- When bidding for contracts, operators may price the disclosure data (e.g. the cost of establishing new data transmission processes) into their bids, which could result in additional costs to the Integrated Rail Body via higher contract prices.
- Statutory powers may be used by the Integrated Rail Body to disclose information that could have unforeseen negative impacts. However, we will seek to introduce appropriate safeguards and protections for information confidentiality such as through legislation, contract, or the licence to ensure that commercial sensitivity is properly considered before data is shared or published.

## Indirect and wider impacts

It is expected the full benefits of open data could be realised where there are lower barriers to data sharing. The aim of open data policy more broadly is to enable innovation, an improved passenger experience and more effective decision-making.

Some potentially indirect or wider impacts of the changes proposed (Option 1 and Option 2) are discussed below.

- **Minimise the impact of crises on the network** – The failure of the May 2018 timetable change cost the government considerably and led to reputational damage. With improved data sharing within the sector the response to crises such as these could be more efficient and reduce the impact on passengers, TOCs and the government.
- **Improving collaboration across the sector** – By sharing data more openly across the railway sector, bodies can develop a better understanding of the bigger picture, and work together to address issues that require coordination and collaboration.
- **Accelerate innovation on the railway** – Open data could support the outsourcing of innovation, where private sector specialists could build powerful analytical tools by merging data in new ways. More data would be available to third party app developers to improve their journey planning tools. Analysis of TfL's decision to publish open data<sup>1</sup> shows that there were 600 apps using their open data, creating GVA, high skilled employment and innovation for customer-facing services. The report also concludes open data has benefitted passengers through improved information and has benefitted TfL through savings from not having to produce apps in-house or invest as much in information campaigns and systems.
- **Improve integration with wider sectors** – Open rail data could support the development of seamless, end-to-end journey experiences, for example supporting the development of Mobility as a Service offerings and partnering with retailers to introduce attractive rewards programmes or compensating for negative journey experiences.

## Direct costs and benefits to business calculations

No direct costs have been identified as part of the analysis undertaken for this IA. The changes proposed are not regulatory. This includes small, micro and medium businesses, who are not expected to incur any costs as a result of the changes proposed.

## A summary of the potential trade implications of measure

This proposal relates to domestic rail passenger travel and is therefore not expected to have any implications for trade.

## Monitoring and Evaluation

DfT is currently developing a structured benefits management approach to measure, monitor and report on the progress of the Programme. We are also progressing further work to scope additional evaluation activity, which is likely to involve an evaluation scoping study to assess data requirements and explore impact evaluation methods. Evaluation of the reforms is likely to draw on a range of data sources, such as passenger surveys and internal monitoring data, as well as bespoke data collection.

Given the proposed changes in this impact assessment are minor and of a technical nature, we do not consider a separate post-implementation review plan to be proportionate. The proposed changes will be evaluated as part of broader rail reform.

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<sup>1</sup>"Assessing the value of TfL's open data and digital partnerships", Deloitte 2017, <https://content.tfl.gov.uk/deloitte-report-tfl-open-data.pdf>

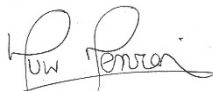
<b>Title: Environment</b>  <b>Lead department or agency:</b> Department for Transport <b>Other departments or agencies:</b> N/A			<b>Impact Assessment (IA)</b>	
			<b>Date:</b> January 2024	
			<b>Stage:</b> Final	
			<b>Source of intervention:</b> Domestic	
			<b>Type of measure:</b> Primary legislation	
			<b>Contact for enquiries:</b> railreform.bill@dft.gov.uk	
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> Not applicable	
<b>Cost of Preferred (or more likely) Option (in 2019 prices)</b>				
<b>Total Net Present Social Value</b>	<b>Business Net Present Value</b>	<b>Net cost to business per year</b>	<b>Business Impact Target Status</b>	
NQ	NQ	NQ	Not a regulatory provision	
<b>What is the problem under consideration? Why is government action or intervention necessary?</b> <p>Environmental policy in the rail sector currently lacks coordination and strategic oversight. The fragmented nature of the current industry structure means that there is no one party accountable for addressing environmental issues which risks poor value for money in decision-making regarding environmental measures as decisions are not taken with a system-wide view in mind. The establishment of the Integrated Rail Body as the strategic decision-making body of the rail sector provides an opportunity to address this lack of coordination. Placing a new environment duty on the Integrated Rail Body will ensure the new rail body is incentivised to embed environmental thinking across all its decisions.</p>				
<b>What are the policy objectives of the action or intervention and the intended effects?</b> <p>The policy objective is to ensure that the IRB considers the environment by giving it a specific duty to consider the environment in all its operations. The policy objective is to ensure that the IRB is accountable for and leads the sector's delivery of a more environmentally sustainable rail network by:</p> <ul style="list-style-type: none"> <li>A) Ensuring that there is clear strategic direction in addressing environmental issues for the railways,</li> <li>B) Ensuring that there is clear accountability in addressing environmental issues for the railways, and</li> <li>C) Ensuring the railways are setup in a way that brings the sector and its people together to best deliver environmental benefits.</li> </ul>				
<b>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</b> <ul style="list-style-type: none"> <li>• <b>Do Nothing:</b> The Integrated Rail Body is established without a legal requirement to consider the environment in its operations. The 30-year strategy and environment plan would still be published. Action on the environment will be limited to individual action by train operators, high-level strategy from DfT, and government-wide environmental targets.</li> <li>• <b>Do Something:</b> The Plan for Rail committed to a specific duty on the Integrated Rail Body to consider environment principles in all their operations being established. This duty will require the Integrated Rail Body to show they have considered and tried to mitigate the environmental impact of their operations.</li> </ul> <p>There are options, described below, for the mechanism by which this is created.</p> <ul style="list-style-type: none"> <li>○ <b>Option 1</b> – the duty is established in primary legislation</li> <li>○ <b>Option 2</b> – the duty is established in the Integrated Rail Body licence</li> <li>○ <b>Option 3</b> – a combination of 1 and 2. A requirement is placed in primary legislation for the scope of the Integrated Rail Body licence to include a duty on environment (<b>preferred option</b>)</li> </ul> <p><i>The proposals relate to the legislative changes required to ensure the Integrated Rail Body is established with the appropriate framework to fulfil a strategic decision-making role on the environment in rail. They are not direct proposals for environmental upgrades or changes on the network, although the ambition is that will be the indirect effect of the changes proposed.</i></p>				



<b>Will the policy be reviewed? Yes If applicable, set review date: TBC</b>				
Is this measure likely to impact on international trade and investment?			No	
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

*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 by the responsible Minister:



Date: 20/02/2024

# Summary: Analysis & Evidence

## Policy Options 1, 2 & 3

**Description:** A specific environment duty is established on the Integrated Rail Body

### FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	NQ		NQ		NQ
High	NQ		NQ		NQ
Best Estimate	NQ		NQ		NQ
Description and scale of key monetised costs by ‘main affected groups’					
Costs have not been monetised at this stage.					
Other key non-monetised costs by ‘main affected groups’					
<ul style="list-style-type: none"><li>Cost of implementing legislation and familiarisation costs to operators and private companies.</li><li>Cost to the Integrated Rail Body of establishing capability to adhere to the new legislative framework.</li><li>Cost to ORR of monitoring the specific duty on the Integrated Rail Body .</li></ul>					
These costs apply under all Options.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	NQ		NQ		NQ
High	NQ		NQ		NQ
Best Estimate	NQ		NQ		NQ
Description and scale of key monetised benefits by ‘main affected groups’					
Benefits have not been monetised at this stage.					
Other key non-monetised benefits by ‘main affected groups’					
<ul style="list-style-type: none"><li>Improved value-for-money in decision-making regarding the environment</li><li>Greater accountability and visibility of environment policy.</li><li>Wider societal and economic benefits of environment improvements.</li></ul>					
These benefits apply under all Options					
Key assumptions/sensitivities/risks			Discount rate (%)		N/A
<ul style="list-style-type: none"><li>There is a risk that the policies fail to lead to a change in behaviour. This might arise if:<ul style="list-style-type: none"><li>Compliance, monitoring and evaluation framework surrounding the duty is not sufficiently robust</li><li>The duty doesn’t drive cultural change.</li></ul></li><li>In this instance, poorly aligned decision-making would lead to less cost-effective decision-making and a less cost-effective way of meeting the net zero legal commitment.</li><li>Under <b>Option 1</b>, there is a risk of a loss of flexibility on the statutory duty. This includes making the duty more specific or amending it if policy objectives change.</li><li>Under <b>Option 2</b> there is a risk that an environment duty could be excluded from future the Integrated Rail Body licenses. There is also a risk that the lack of obligation to include an environmental duty in primary legislation signals to the industry a lack of commitment by government regarding environmental policy. This could lead to reduced green investment in the sector.</li></ul>					
Option 3 balances both these risks by retaining flexibility for future decision-makers through including the duty in the Integrated Rail Body licence rather than in primary legislation itself, whilst containing a requirement in primary legislation to continue to include a duty in the licence acts as a signal of government’s commitment to longer-term environment policy. <b>Option 3 is therefore the preferred option.</b>					

**BUSINESS ASSESSMENT (Options 1, 2 and 3)- not applicable**

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NQ	Benefits: NQ	Net: NQ	
			N/A

# Evidence Base

## Background

This impact assessment supports the Rail Reform Bill which takes forward legislative measures on reforms to the rail industry, following the publication of the Plan for Rail White Paper.

Environmental impacts in transport have become a major policy area for government in recent years, due to the threat posed by climate change, the significant contribution transport makes to the UK's emissions and the UK's net zero target. The significant transformation of how the railways are run has therefore led to a consideration of whether incentives and roles & responsibilities regarding environment policy are well-aligned in the sector, and whether the legislative framework for the environment is still fit for purpose.

Rail has historically been considered a 'green' mode of transport due to its relatively low carbon emissions, however it is important to note that the environmental impact of the railways is not just limited to atmospheric pollution, but covers areas including:

- Noise and vibration
- Atmospheric pollution
- Water pollution
- Waste and Litter
- Non-renewable resources
- Lineside ecology and biodiversity

Managing the rail industry's impact on the environment requires both active mitigation of environmental externalities and thinking environmentally. The Plan for Rail outlines a series of commitments that set out the government's ambitions to achieve this. This includes a commitment to place an environment duty on the Integrated Rail Body.

### *Active Mitigation*

The Plan for Rail sets the following commitments on environment:

- Electrification of the network will be expanded, and alternative technologies such as hydrogen and battery power will help to achieve zero emissions from trains and reduce air pollution.
- The contribution of the railways to the nation's green recovery will be strengthened, including through a comprehensive environment plan that will establish rail as the backbone of a cleaner future transport system.
- Energy efficiency, renewable power production, tree-planting and other green initiatives across the rail estate will be accelerated.
- Long-term investment in climate resilience will be prioritised, supported by smarter forecasting, planning and technology.

This is in addition to the commitments to support and encourage the growth of the rail freight industry, which will lead to direct positive outcomes for the environment due to the modal shift from road freight to rail freight.

These commitments will be reinforced by the comprehensive environment plan for the rail network, which will, as part of the Integrated Rail Body's 30-year strategy, set the foundations of the Integrated Rail Body's approach to the environment. This plan will set out the path forward for delivering a greener future with clear commitments on carbon emissions, air pollution, biodiversity, waste, water usage, noise and vibration.

### *Thinking Environmentally*

While active mitigation is an important way to manage impact on the environment, and includes shifting away from harmful actions where possible, compensating where not, and cleaning up after past actions, thinking environmentally is a way of trying to ensure that current actions do not add to what requires

active mitigation. If the Integrated Rail Body is to be the strategic decision-making body of the industry, environmental principles should be part of what guides that strategic decision-making. Effective management of the rail industry's impact on the environment requires considering the environment across all operations, as opposed to only considering the environment as an isolated policy area.

The Plan for Rail therefore commits to an environmental duty on the Integrated Rail Body. The duty will require the Integrated Rail Body to show they have considered the environmental sustainability of the railway in their operations. The detail of the duty, including how it will function, is still under development and will be consulted on as part of the Integrated Rail Body licence. Further analysis will be carried out as the policy evolves.

## **Current situation**

In terms of legislation, currently, there are two statutory duties in existence with respect to the environment. These apply to the Office of Rail and Road (ORR), which are:

- To contribute to the achievement of sustainable development; and
- To have regard to the effect on the environment of activities connected with the provision of railways services.

In addition, with respect to the railways, there are four main sources of environmental policy and targets - Greening Government Commitments (GGCs), the Environment Act 2021, the contracts and funding settlement process for rail, and ORR-issued licences.

### *Greening Government Commitments*

The Greening Government Commitments (GGCs) set out the actions UK government departments and their partner organisations will take to reduce their impacts on the environment in the period 2021 to 2025. It sets high-level targets and practices that all government departments should follow in managing, measuring, and mitigating their environmental impact. This includes Network Rail and will include the Integrated Rail Body. They are commitments and are not themselves legally binding.

### *Environment Act 2021*

The Environment Act sets new legally binding environmental targets, and creates a new, independent Office for Environmental Protection (OEP) which will hold government and public bodies to account on their environmental obligations.

This sets various duties on public authorities to better protect the environment. Namely:

- A duty to conserve and enhance biodiversity
- A duty to co-operate with local authorities as they develop their air quality plans
- A duty to comply with Natural England requests in regard to areas such as the improvement and management of designated sites, and species conservation.
- A duty on Ministers to have due regard to the Environment Principles Policy Statement

### *Contracts and Funding Settlement Process for Rail*

During the funding settlement process, the Secretary of State for Transport is legally required to provide the ORR with detail of requirements that need to be achieved by the rail sector in a given period. This has previously included environmental performance.

However, this has not been done on a consistent basis throughout parliamentary periods and changes of government. For example, the High-Level Output Statement (HLOS) published for Control Period 4 (2009 – 2014) and for Control Period 6 (2019-2024) did not cover environment, whereas the HLOS published for Control Period 5 (2014 – 2019) did cover environmental performance, albeit in a light touch manner.

It directed industry to set carbon and energy efficiency objectives and demonstrate how the industry's decision-making processes were meeting government's broader environmental agenda. This is therefore a mechanism by which SoS can give guidance to the sector on environmental issues, although they are not legally required to do so.

### *ORR licences to TOCs*

The ORR issues licences to operators to allow access to railway infrastructure. Through these licensing agreements, all rail operators and the infrastructure manager are required to adhere to the conditions set within their licences to operate services and manage the railway infrastructure.

With respect to the environment, ORR have historically included an 'Environmental Matters' condition in licences. This condition requires all licence holders (passenger, freight, charter passenger operators, network operators, station, and depot operators) to put in place an "environmental arrangement" comprising of a written environmental policy, operational objectives and management arrangements. These policies, objectives and arrangements need to be submitted within six months of the licence being granted and take into consideration the ORR's Railway Operations and the Environment Guidance. The guidance sets out the possible options that operators can adopt across each of the areas below to demonstrate they have due regard to the environment across their operations and functions:

- Noise and vibration
- Atmospheric pollution
- Water pollution
- Waste and Litter
- Non-renewable resources
- Lineside ecology

## **Problem under consideration**

The policies, targets and legal requirements that currently exist in the rail sector with respect to the environment (as described in the previous section) lack clear strategic direction and coordination. This is a product of the fragmented nature of the current industry structure, in that no individual party has responsibility for addressing cross-cutting issues in the sector such as its environmental impact. ORR licences are given to individual TOCs, with room for flexibility of interpretation and inconsistency, and the inclusion of environmental matters within the funding framework is not a legal requirement.

There is no one body taking a whole-system view of the sector and which environmental measures are the most cost-effective options to implement, risking to poor value for money in decision-making.

## **Rationale for intervention**

The new industry structure as proposed in the Plan for Rail will see the Integrated Rail Body established as the strategic decision-making body for the sector, with considerable power over the planning of the railways. This is therefore a significant opportunity to address the lack of coordination and whole-system thinking that the industry is lacking regarding environmental policy.

Placing a legal requirement on the Integrated Rail Body to consider the environment across its decision-making is the optimal way of ensuring this is addressed. The Integrated Rail Body will have oversight of the rail network as a whole so is best placed to consider trade-offs and how best to implement environmental measures across the sector. A legal framework for this not only ensures that this is embedded, but also signals to the sector a longer-term commitment to the environment.

## **Policy objectives**

The policy objective is to ensure that the IRB is accountable for and leads the sector's delivery of a more environmentally sustainable rail network by:

- A. Ensuring that there is clear strategic direction in addressing environmental issues for the railways,
- B. Ensuring that there is clear accountability in addressing environmental issues for the railways, and
- C. Ensuring the railways are setup in a way that brings the sector and its people together to best deliver environmental benefits.

Objective C is seeking to ensure cultural change in the industry. Cultural change can be evidenced by the Integrated Rail Body considering the environment in all their strategic decision-making. This is alongside evidence that rail bodies are also prioritising environment in wider decision-making and have integrated environmental principles into the day-to-day decision-making of the industry.

The key indicators of success for all the objectives include:

- Progress on government objectives on the environment, relating to transport and decarbonisation.
- A reduction of the impact on the environment by the railway industry.

## **Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)**

The changes proposed will largely impact a new publicly owned government body or private companies who sign up to working with it. It is not expected there will be direct impacts on businesses outside of these (including any disproportionate impacts on small or micro businesses) or any significant distributional impacts between sectors. Additionally, the changes proposed are setting out the framework for environment policy under the new industry structure and the resulting impacts will largely depend on how these changes are applied. The range of uncertainty of these impacts is significant. At this stage we have therefore not attempted to quantify or monetise the impacts of the changes for proportionality reasons.

The detail of the duty, including how it will function, is still under development and will be consulted on as part of the IRB licence.

## **Description of options considered**

### **Do nothing:**

The Integrated Rail Body is established without a legal requirement to consider the environment in its operations.

The 30-year strategy and environment plan would still be published.

The licences issued to train operators by ORR will still include an environmental matters section. Action on the environment will be limited to individual action by train operators, high-level strategy from DfT, and government-wide environmental targets, such as Greening Government Commitments (GGCs) and Net Zero.

### **Options**

The Plan for Rail commits to a specific environment duty to be placed on the Integrated Rail Body. This duty will require the Integrated Rail Body to show they have considered the environmental sustainability of the railway in their decisions. The detail of the duty, including how it will function, is still under development.

There are differing options available for the mechanism used to establish this environment duty on the Integrated Rail Body, including:

- **Option 1** - the duty is established in primary legislation
- **Option 2** - the duty is established in the Integrated Rail Body licence
- **Option 3** - a combination of 1 and 2. A requirement is placed in primary legislation for the scope of the Integrated Rail Body licence to include a duty on the environment (**preferred option**)

ORR will monitor the Integrated Rail Body's compliance with the duty as part of their role in ensuring licensee compliance.

## **Summary and preferred option with description of implementation plan**

The preferred option is to use a combination of primary legislation and the Integrated Rail Body licence, placing a requirement in primary legislation on the Secretary of State to include a licence condition (a more flexible mechanism than primary legislation) that will impose an obligation on the IRB regarding the environment.

The detail of the duty is still under development and will be consulted on as part of the Integrated Rail Body licence. The intention is that the environment duty would enable the IRB to elicit support from contracted operators to achieve environmental outcomes.

## **Monetised and non-monetised costs and benefits of each option (including administrative burden)**

We have not identified a difference in costs and benefits of the options, as long as there remains a clear ambition to consider the environment. There are differing risks between the three, as discussed in the Risks section below. Option 3 is the preferred option because it is considered to balance these risks and best meet the policy objectives.

### **Direct Costs- All Options**

- Cost of implementing legislation and familiarisation costs to operators and private companies.
  - This is expected to be a small cost as the changes are not regulatory so businesses will not be required to change their behaviour.
- Cost to the Integrated Rail Body of establishing capability to adhere to the legislative framework set out
  - The detail of the structure of teams within Great British Railways which will deliver these has yet to be decided but capability will be required to adhere to the new duty. This includes policy and delivery capability.
- Cost to ORR of monitoring the duty on the Integrated Rail Body
  - As explained in the Current Situation section above, the ORR already fulfils a monitoring role regarding operator licences concerning the environment. This will likely be an administrative cost of a resource expansion to be able to fulfil scrutiny and monitoring tasks, as well as potentially new capability to collect, process and analyse wider environmental data from operators and the Integrated Rail Body. This is not anticipated to be a significant cost and the specific responsibilities ORR will hold are under development. They will be refined in the course of the development of the IRB licence which will be subject of a separate public consultation.

### **Direct Benefits – All Options**

- There will be greater value-for-money in environmental decision-making
  - The fragmentation of environmental policy in the absence of clear coordination and accountability risks decisions not being taken in the most cost-effective way. Having one body with sight of the whole sector will allow environmental measures to be implemented considering the overall value for money of different options. This is because the Integrated Rail Body will be able to take a system-wide view and consider trade-offs appropriately.
- There will be greater accountability of environment policies.
  - Having one body accountable for environment across the network, bound by legislative requirements on environment, brings greater accountability to improvements on the network.

## **Risks**

### **Do Nothing**

Without the duty on the Integrated Rail Body to consider the environment across its operations, it would be more difficult to hold the Integrated Rail Body to account over meeting environmental objectives. This would overall lead to a more fragmented approach to managing the environmental impact of the railway industry and mean that meaningful change is much more difficult to achieve.

### **Options 1, 2 and 3**



- The compliance, monitoring and evaluation framework surrounding the environment duty is not sufficiently robust, allowing the Integrated Rail Body to not comply with the measures set out to sufficiently drive the substantial change desired.
- In this instance, poorly aligned decision-making would lead to less cost-effective decision-making and a less cost-effective way of meeting the net zero legal commitment.
- There is a risk that the duty doesn't drive cultural change. Environmental principles are not given sufficient priority across the whole industry (i.e. by all bodies and operators).

## Risks of Option 1

- Dependent on the drafting of the new duty, there could be limited flexibility under this option where it is established itself in primary legislation. This includes making the duty more specific (i.e., specifying a framework, the current option proposes a more general duty), or amending it if policy objectives shift. To note it is unlikely policy objectives would shift away from ensuring the rail sector considers the environment.

## Risks of Option 2

- Under Option 2, where the duty is included in the Integrated Rail Body licence, there will be more flexibility to amend it. However, the lack of any reference to an environment duty in primary legislation (a more permanent mechanism) could mean an environment duty is excluded altogether in future. This could limit the confidence the sector has in the long-term commitment to environmental policy resulting in reduced green investment in the sector.

Under Option 3, it will be established in primary legislation that the Integrated Rail Body licence must address the environment. This mitigates the risk included under Option 2 of an environmental duty being excluded from the licence and retains a signal to the sector of the government's commitment to environmental policy, whilst retaining flexibility for future decision-makers over what the scope of the environmental requirement should look like (which establishment itself in primary legislation would not provide). **Option 3 is therefore the preferred option.**

## Mitigations

- A robust compliance framework is being designed, with defined roles and responsibilities for ORR, Transport Focus and the Secretary of State to hold the Integrated Rail Body to account.
- We are consulting on the different mechanisms to create the new duty, to ensure all benefits and disadvantages have been considered.

## Assumptions

Assumption that the Integrated Rail Body is established with the powers and remit envisioned in the Plan for Rail, and acts as a strategic decision-making body for the industry.

## Indirect & Wider impacts

### Indirect Impacts

As above, the changes are not regulatory so there are not expected to be any direct costs to businesses from the proposal. However, there is an argument that there may be private sector markets such as freight and the wider supply chain which are indirectly affected by the changes due to potentially additional costs from switching to environmentally friendly solutions arising from changes in the behaviour of the IRB, as well as private companies (some of which may be SMEs) who are affected by cost increases. This is because they could need to change their operational, managerial and investment planning processes if they are required to become more environmentally stringent.

However, the most up-to-date studies (OECD, 2015)<sup>2</sup> that have carried out historical empirical studies to determine the impacts of environment regulations and policy interventions, have not yet been able to deduce a strong correlation between environment regulations and material negative impacts on employment, competitiveness and productivity of companies.

Although the need for possibly costly abatement activities is acknowledged, subsequent reviews have shown that there was little aggregate effect on economic performance by more stringent environment policies. Where impacts have been felt on employment, productivity and competitiveness, they have been marginal relative to economic and environmental benefits generated by environmental regulation and legislation.

There is significant uncertainty about how the behaviour and culture of the Integrated Rail Body will affect parties within the sector in the future and this will continue to be monitored going forward. It is possible that changes caused by the environmental duty may cause wider trade impacts, especially when it comes to carbon trading, private investment in new rolling stock and new retrofitting technologies. However, there is currently very little evidence on the wider impacts that could be associated with such an effect.

Therefore, the government will continue monitoring the possible knock-on impacts of environmental policies through the funding settlement process as well as by the ORR through its economic and competition monitoring functions. This should generate data to allow for reviewal of the environment duty at a later date.

## Wider Impacts

Provided the duty, combined with wider environmental policy provides appropriate incentives and obligations to the Integrated Rail Body to consider the environment, the rail sector's impact on the environment should improve. This could be both through improving environmental considerations within rail planning and an improved, and more reliable service as envisioned in the Plan for Rail<sup>3</sup> encouraging mode shift onto rail and away from more polluting sectors. The extent of this benefit depends upon how the Integrated Rail Body chooses to act upon the framework set out, and what environmental policies they develop.

It is widely acknowledged that reducing emissions from rail, reducing noise, and increasing the use of active travel, public transport and rail will bring health and wellbeing benefits<sup>4</sup>. Increasing biodiversity on and around the rail estate should also benefit the environment and could benefit the health and wellbeing of those using and engaging with the rail estate. As above and in the Plan for Rail, decarbonising trains and the wider network will also help to fight climate change and reach the UK's net zero target.

An example of how integrating environmental thinking into business processes can serve to provide environmental and economic benefits is with Network Rail's 'circular economy' policies. Network Rail's ambition is to reuse, repurpose or redeploy all surplus resources, design out waste and plastic pollution, and embed "circular economy" thinking into the rail industry by 2035.

For instance, Network Rail are pursuing sustainable construction methods and the re-use of key infrastructure materials like track and ballast<sup>5</sup>, and are working proactively on better management of materials (such as scrap metal) on the lineside. The recycled composite sleepers will help Network Rail achieve its Zero Carbon 2050 target due to at least a 40% reduction in greenhouse gas emissions from sleeper production and their longer life span than traditional wood sleepers<sup>6</sup>.

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<sup>2</sup> 'The economic impacts of environmental policies: Key findings and policy implications', OECD, <https://www.oecd-ilibrary.org/sites/bf2fb156-en/1/3/1/index.html?itemId=/content/publication/bf2fb156-en&csp=abd38966490e12649fcfa174dc7b5f59&itemIGO=oecd&itemContentType=book>

<sup>3</sup> Plan for Rail- [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/994603/gbr-williams-shapps-plan-for-rail.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994603/gbr-williams-shapps-plan-for-rail.pdf)

<sup>4</sup> BMJ, 2020- <https://www.bmj.com/content/368/bmj.l6758>

<sup>5</sup> 'Environmental Sustainability Strategy 2020 – 2050', Network Rail, 2020, page 36, <https://www.networkrail.co.uk/wp-content/uploads/2020/09/NR-Environmental-Strategy-FINAL-web.pdf>

<sup>6</sup> 'Circular practices in the railway and ways forward: REUSE Project final Report', International Union of Railways (UIC), Page 25, [https://uic.org/IMG/pdf/reuse\\_project\\_final\\_report.pdf](https://uic.org/IMG/pdf/reuse_project_final_report.pdf)

Network Rail is setting high standards for its supply chain and is looking to work with suppliers to research and develop new, innovative secondary materials that reduce reliance on virgin materials<sup>7</sup>. There could be indirect costs to the supply chain from decisions taken as a result of the obligation on environment being placed on the IRB via the licence, which will be subject to further consultation. The duty proposed in this IA should embed this type of environmental thinking across the sector.

## Impacts on Small, Micro and Medium Businesses

As above, there are not expected to be any direct impacts on any private businesses, including small and micro businesses, or businesses with up to 499 employees, as the changes are not regulatory and do not require a change in behaviour from businesses.

There may be indirect impacts on private companies, who may be SMEs, depending upon how the Integrated Rail Body chooses to act upon the duty they are subject to. The rail sector mostly comprises of larger businesses so these would not be expected to be significant if they materialise.

The 2022 business population estimates for passenger rail transport (interurban) are set out in the table below, which represents the number and percentage of businesses in the sector in the UK and regions that are micro, small, medium or large businesses.<sup>8</sup> According to the estimates, the majority (62.5%) of businesses in passenger rail transport are medium or large with 50 or more employees.

**Table 5: Business population estimates for passenger rail transport (interurban)**

Business size	Number of businesses	Proportion of businesses
1-9 employees	10	25%
10-49 employees	5	12.5%
50-249 employees	5	12.5%
250+ employees	20	50%

## A summary of the potential trade implications of measure

This proposal relates to domestic rail passenger travel and is therefore not expected to have any implications for trade.

## Monitoring and Evaluation

The Department for Transport is currently developing a structured benefits management approach to measure, monitor and report on the progress of the programme. We are also progressing further work to scope additional evaluation activity, which is likely to involve an evaluation scoping study to assess data requirements and explore impact evaluation methods. Evaluation of the reforms is likely to draw on a range of data sources, such as passenger surveys and internal monitoring data, as well as bespoke data collection.

Given the proposed changes in this impact assessment are minor and of a technical nature, we do not consider a separate post-implementation review plan to be proportionate. The proposed changes will be evaluated as part of broader rail reform.

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<sup>7</sup> 'Rail Environment Policy Statement', Department for Transport, 2021, page 20. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1002166/rail-environment-policy-statement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002166/rail-environment-policy-statement.pdf),

<sup>8</sup> Business Population Estimates for the UK and Regions 2022. Table 7 – UK Groups. Passenger Rail Transport, Interurban. <https://www.gov.uk/government/statistics/business-population-estimates-2022>

## Annex D

<b>Title: ORR's competition duty</b> (widening the scope through amending section 4 of the Railways Act 1993) <b>Lead department or agency:</b> Department for Transport <b>Other departments or agencies:</b> ORR		<b>Impact Assessment (IA)</b>		
		<b>Date:</b> January 2024		
		<b>Stage:</b> Final		
		<b>Source of intervention:</b> Domestic		
		<b>Type of measure:</b> Primary legislation		
		<b>Contact for enquiries:</b> railreform.bill@dft.gov.uk		
<b>Summary: Intervention and Options</b>		<b>RPC Opinion:</b> Not applicable		
<b>Cost of Preferred (or more likely) Option</b> (in 2019 prices)				
<b>Total Net Present Social Value</b>	<b>Business Net Present Value</b>	<b>Net cost to business per year</b>	<b>Business Impact Target Status</b> Qualifying provision	
<p>The government is committed to having a competitive railway, exploring new opportunities for open access operators (OAOs), and ensuring it is sustainable for the future.</p> <p>When considering future applications for access, as well as the benefits for passengers, the government wants the Office for Rail and Road to give sufficient weight to taxpayers' interests and the impact that proposed services will have on public funds.</p> <p>This requires primary legislation to amend the regulator's existing competition duty and necessitates government intervention.</p>				
<b>What are the policy objectives of the action or intervention and the intended effects?</b> <p>The intended objective is that the Office for Rail and Road (ORR) will continue to have a duty to promote competition. The amendment will strengthen the obligation on ORR to consider the impact on public funds, when making decisions on new applications from rail passenger operators to access the infrastructure and provide services.</p> <p>The desired effect is that the ORR will be able to evidence how they have taken taxpayers' interests into account when assessing applications to access the network.</p>				
<b>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</b> <p><b>Option 0 - Do nothing:</b> The government would make no amendments to ORR's Section 4 competition duty in the Railways Act 1993 or update the Secretary of State's Guidance to the regulator.</p> <p><b>Option 1:</b> The government updates the Secretary of State Guidance to the regulator to provide a firmer steer on the importance of public sector funding considerations/guidance in determining access applications for rail passenger services, yet without legislative changes.</p> <p><b>Option 2:</b> The government recasts ORR's existing competition duty in existing legislation. This is the preferred option as it will strengthen the obligation on ORR to consider public funding impacts while retaining the regulator's independence in determining access applications for rail passenger services. <b>(Preferred option)</b></p>				
<b>Will the policy be reviewed?</b> It will be reviewed when rail reform is evaluated. <b>If applicable, set review date:</b> TBC				
Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	<b>Micro No</b>	<b>Small No</b>	<b>Medium Yes</b>	<b>Large Yes</b>
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

***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 by the responsible Minister:



Date:

20/02/2024

# Summary: Analysis & Evidence

## Policy Option 2

**Description:** No legislation changes, update Secretary of State's guidance to the regulator.

### FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Cost (Present Value)	
Low	NQ		NQ	NQ	
High	NQ		NQ	NQ	
Best Estimate	NQ		NQ	NQ	
<b>Description and scale of key monetised costs by ‘main affected groups’</b> Costs have not been monetised in this impact assessment. This impact assessment does not include any monetised costs as quantification will rely on the regulator’s discretion to impose access charges on open access operators.					
<b>Other key non-monetised costs by ‘main affected groups’</b> Open access operators could potentially see monetary costs on a small-medium scale if the regulator chooses to increase charges relating to track access. The possibility of increased charges cannot be predicted at this point as it will be determined by the Regulator. Non-open access passenger services will not be impacted. Freight will not be impacted.					
<b>Government &amp; Business:</b> Administrative cost of updating and implementing Secretary of State guidance.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)	
Low	NQ		NQ	NQ	
High	NQ		NQ	NQ	
Best Estimate	NQ		NQ	NQ	
<b>Description and scale of key monetised benefits by ‘main affected groups’</b> This impact assessment does not include any monetised benefits as quantification would rely on the regulator’s future charging policy decisions.					
<b>Other key non-monetised benefits by ‘main affected groups’</b> The scale of non-monetised benefits of the proposed policy is not fully known, as it will be the regulator’s discretion as to how to implement the guidance.					
Key assumptions/sensitivities/risks				Discount rate	
Given the inherent flexibility in how the regulator will decide to implement the guidance, we have been unable to assess specific impacts. The Regulator may choose to increase charges relating to track access, which could result in small-medium costs for OAOs. For this option, the costs and benefits have been described qualitatively only.					

### BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NQ	Benefits: NQ	Net: NQ	
			1. N/A



## Summary: Analysis & Evidence

## Policy Option 2

**Description:** Recast the Office of Rail and Road's Competition Duty in existing legislation to give consideration to public funding to access application decisions (**preferred option**).

### FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ		NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

**Description and scale of key monetised costs by 'main affected groups'**  
 Costs have not been monetised in this impact assessment. Costs will depend on how the regulator implements the widened considerations it must take in relation to access application decisions. There could potentially be small-medium costs to open access operators as the Regulator may choose to increase charges relating to track access. There may also be potential administrative costs in providing the consideration of impacts on public funds. It would be unreliable to try and quantify this at this stage as amounts will be up to the discretion of the Regulator.

**Other key non-monetised costs by 'main affected groups'**  
**Government:** Administration cost of making a minor legislative amendment to the duty.  
**Business:** Administrative costs in the event of ORR implementing the amended duty. Further detail provided in the section on non-monetised costs and benefits.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ		NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

**Description and scale of key monetised benefits by 'main affected groups'**  
 Due to the specifics of the policy implementation being at the discretion of the regulator, it would be unreliable for us to state monetised benefits.

**Other key non-monetised benefits by 'main affected groups'**  
 Subject to this policy being implemented via legislation, the regulator will be required to consider whether the introduction of new passenger services would result in unreasonable costs being borne by public funds. This will potentially benefit taxpayers as the way in which new services will be delivered is likely to represent value for money. We cannot specify amounts at this time as that will be for the regulator to decide.

Key assumptions/sensitivities/risks (%)	Discount rate
Sensitivities for this impact assessment include potential increased cost and administrative burden in relation to evidencing the impact on public funds. Freight will not be impacted by this recast of this duty.	

### BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NQ	Benefits: NQ	Net: NQ	
			2. N/A



# Evidence Base

## Background

Railways are an expensive national asset, funded by taxpayers and farepayers; it is important that they are operated efficiently and to their full potential within the public interest. To support these objectives, the Plan for Rail sets out the government's plans for rail reform, underpinned by legislation. The new legislation will give the IRB powers and duties to plan the use of the network, balancing priorities and always seeking to maximise the overall public benefit.

The Office of Rail and Road (ORR) is the competition authority for the railways. Section 4 of the Railways Act 1993 includes several general duties for the ORR, including a duty to promote competition in the railways, for the benefit of rail users. This is particularly relevant to ORR's role in respect of access, where the duty has been considered in relation to passenger open access applications.

The below table sets out use of the network by operator type. In this table 'use' is defined in terms of total passenger and freight train kilometres operated in Great Britain, from April to June 2023:<sup>1</sup>

**Table 6: Passenger and Freight train kilometres**

<b>Passenger and Freight train kilometres, (April to June 2023, millions)</b>		
Freight operators	7.9	6%
Franchised passenger operators <sup>2</sup>	120.6	92%
OAo	2.0	1%
<b>Total<sup>3</sup></b>	<b>130.4</b>	

The Plan for Rail commits to exploring opportunities for new open access operators (OAos) in the future. The Government values the benefit of competition and supports the introduction of new open access services to ensure that we are getting best use of the network. The Government also remains committed to ensuring freight and open access operators have the confidence in the access framework, to enable continued investment in the railways.

## Public subsidy

The financial arrangements for delivering rail services are complex and involve flows of money between a range of private and public sector bodies.<sup>4</sup> The privatisation of the railways in 1993 was set up using a franchising model to promote competition and improve outcomes but the Government has always needed to provide significant public subsidy, to ensure that objectives for the rail network are delivered. The rail market is different to many consumer markets, given the scale of public money involved, so it is important that this is given due consideration by the regulator when making decisions in what is a mixed public and private market. Furthermore, the COVID-19 pandemic resulted in a dramatic reduction in

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<sup>1</sup> Figures may not sum to total due to rounding. ORR Passenger and freight rail usage and performance, April to June 2023. Passenger and freight train kilometres include only the distance covered by a locomotive itself. See: i) [Passenger rail usage - April to June 2023 \(orr.gov.uk\)](https://www.orr.gov.uk/passenger-rail-usage-april-to-june-2023) and ii) [Freight rail usage and performance April to June 2023 \(orr.gov.uk\)](https://www.orr.gov.uk/freight-rail-usage-and-performance-april-to-june-2023).

<sup>2</sup> ORR refer to these operators as franchised operators and note: Franchised operators run services as part of contracts awarded by government (although no longer franchises, we have retained this term for referring to these operators for consistency and until a new term is adopted across the industry. See: [Passenger rail usage - April to June 2023 \(orr.gov.uk\)](https://www.orr.gov.uk/passenger-rail-usage-april-to-june-2023) and ii) [Freight rail usage and performance April to June 2023 \(orr.gov.uk\)](https://www.orr.gov.uk/freight-rail-usage-and-performance-april-to-june-2023).

<sup>3</sup> Passenger train kilometres presented are for mainline operators in Great Britain. The data do not include Eurostar, London Underground, light rail, heritage and charter services. Freight train kilometres are the kilometres travelled by freight operators on all mainline infrastructure, terminals and yards.

<sup>4</sup> A financial overview of the rail system in England, Department for Transport, April 2021. See: <https://www.nao.org.uk/wp-content/uploads/2021/04/A-financial-overview-of-the-rail-system-in-England.pdf>

passenger revenue, increasing the level of public subsidy needed and the government's exposure to financial risk.

To mitigate the impact on public funds, we are proposing to introduce an amendment to the ORR's duty to promote competition. When approving access applications for passenger services, ORR will be required to both promote competition and give consideration to the impact on public funds, before approving any new access applications. This will ensure that ORR will evidence how they have taken into account the interest of taxpayers when taking decisions on open access applications for passenger services.

## Passenger Operators

As noted throughout this impact assessment, the recast competition duty will apply to new applications for OAOs. OAOs and franchised operators are train operating companies that run passenger services on the railway network. The franchised operators run services under franchise agreements and OAOs run services on a commercial basis. There are currently three main open access operators on the network: Grand Central, Hull Trains and, as of October 2021, Lumo.<sup>5</sup> Grand Union Trains has permission to operate from December 2024<sup>6</sup>.

The Government is supportive of future open access operators and recognises the many benefits they can provide, including opening new markets, reducing ticket prices and competing with existing franchised operators to support innovation. One example is the Hull train services. When the franchised timetable did not provide direct services to Hull, the open access operator identified and effectively filled the gap. This is to the benefit of passengers in those areas, who would otherwise not be served by direct services.

Although OAOs make up around 0.6%<sup>7</sup> of all passenger railway journeys, open access services are highly valued, especially for passenger satisfaction. The Government is supportive of accommodating more OAOs, given the potential benefits and reputational value regarding passenger satisfaction.

The Plan for Rail, and subsequent proposals, have been developed to strike the balance between recognising the benefits that open access services bring, and ensuring that new services are good value for money. This was encapsulated in the White Paper text:

*"There will also be the potential for new open access services to be explored in the future where spare capacity exists to make best use of the network and grow new markets for rail. These options [of OAOs] are intended to get the most from the private sector's involvement in the railways, by driving efficiency and providing a high-quality service at the right price to attract passengers."*

OAOs currently pay a lower track access charge than contracted operators. The cost of maintaining and renewing the track is funded via the network grant and through track access charges, as well as through public subsidy provided to contracted operators by government. The alteration of the competition duty will require ORR to take account of the impacts on public funding when making access decisions or setting access charges at future periodic reviews.

## Legislative background and impact

The ORR is the competition authority for the railways and has the powers of the Competition and Markets Authority, under the Competition Act, to address anti-competitive agreements or abuses of a dominant position where the relevant activities relate to the supply of services relating to railways in Great Britain. It is not proposed that this concurrent jurisdiction be altered in any way. The amended

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<sup>5</sup> Heathrow Express also operates services on an open access basis but on the basis of a bespoke access and contractual regime agreed pre-privatisation, which is quite distinct from other operators on the network.

<sup>6</sup> [Monitoring open access - May 2023 update \(orr.gov.uk\)](https://www.orr.gov.uk/monitoring-open-access-may-2023-update)

<sup>7</sup> There were 2.4 million passenger journeys recorded for all open access operators combined between April and June 2023. Passenger journeys by operator, April to June 2023. See: <https://dataportal.orr.gov.uk/media/ip3ayian/passenger-rail-usage-apr-jun-2023.pdf>

competition duty will apply only (as does the current duty) to functions carried out by the ORR under Part 1 of the Railways Act 1993 and the Railways Act 2005. The ORR's decisions will continue to be independent judgements based on all their statutory duties and ORR's Competition Act functions will not be affected by this change and will continue to apply.

Currently, the ORR use the 'not primarily abstractive' test to assess whether proposed services would generate more new revenue than they abstract from public funds. Amending the competition duty strengthens the requirement to balance the promotion of competition with the potential impact to public funds.

The legislative change will most likely impact at the margins. It is unlikely that the recast duty will prevent the granting of access to OAOs providing significantly differentiated services, reflecting the ORR's broader duties to promote the interests of users and support the development of the network to the greatest extent that ORR considers economically practicable.

Several respondents to the Government's '*Williams-Shapps Plan for Rail: legislative changes to implement rail reform*' consultation with industry noted that access for rail freight operators is a very important consideration. The rail freight sector is already a competitive market and we do not want to impact other government commitments to grow rail freight. Following this, the amendment is now limited to passenger service operators and will not apply to decisions on access applications from rail freight operators.

## **Problem under consideration and rationale for intervention**

The problem under consideration is that the current competition duty does not give weight to the consideration of public funds in relation to passenger services. This problem does not apply so much to the rail freight sector which is already a competitive market and subject to other government commitments to grow rail freight. The Government objective is for the recast competition duty in relation to passenger services to ensure that ORR considers the impact on public funds while promoting competition.

Given our intention that Great British Railways will operate in a mixed public and private market, and the high level of publicly funded subsidies that go into the railways, this duty should acknowledge the interests of the taxpayer as well. At present, while the Office of Rail and Road does have duties relating to value for money considerations, the department is of the view that explicitly referencing public funds in the competition duty will strengthen the obligation on ORR to consider public funding impacts.

The aim of this specific policy is to ensure that the benefits of competition are realised, and that the interests of the taxpayer are also considered. To achieve that objective, the Government will take forward a limited legislative amendment to subsection (1)(d) of ORR's section 4 competition duty, as set out in the Railways Act 1993 so that it will read:

*"to promote competition in the provision of railway services for the benefit of users of railway services so far as such competition does not unreasonably increase the cost to public funds of providing services for the carriage of passengers by railway".*

Competition is there to derive certain benefits not just for consumers but for taxpayers too. The Government supports new opportunities for OAOs and encourages operators to apply.

## **Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)**

- The introduction of this duty is a clarification to the criteria that the ORR must consider when evaluating applications for track access;
- The Government has worked closely with the ORR to ensure that the duty does not conflict with existing duties or undermine the regulator's independence.
- The level of analysis used here will remain qualitative.

## Policy objective

The intended outcome of the intervention is that ORR will give taxpayer interests and public funding considerations weight when the regulator is making decisions on access to the track of rail passenger services. This will need to be evidenced in the regulator's decision-making. To note, following consultation feedback, this amendment no longer applies to rail freight operators.

The ORR will balance this amended duty with its other duties that relate to value for money considerations, as they do today. The Government is of the view that explicitly referencing public funds in the competition duty will ensure that ORR evidence how they have considered the impact on public funds.

The ORR will continue, as now, to be the independent regulator with oversight of the access framework. The ORR will balance its statutory duties when making decisions on access to the track and will need to provide evidence of how it has taken into account public sector funding considerations.

The Government will underpin this amendment with updated Secretary of State Guidance to the regulator, which the ORR must take into account in accordance with section 4(5)(a) of the Railways Act 1993.

This duty is not time-limited; it will apply to all relevant decisions going forward.

The ORR is expected to make considerations fairly across all of its responsibilities. The indicators of success for this policy's objectives will include:

- The evidence the ORR will provide to show how they have considered the impact on public sector funding when making access decisions to rail passenger services.
- Evidence of consideration given to public funds in the applications for access to the network.

## Description of options considered

**Option 0 - Do nothing:** No amendments to ORR's Section 4 competition duty in the Railways Act 1993 or update the Secretary of State's Guidance to the regulator.

### Option not suitable/discounted

- This has been discounted as an option as the Government does not believe such an approach sufficiently recognises the levels of public funding underpinning the railway.

### Option 1: Update the Secretary of State Guidance

Update Guidance issued by the Secretary of State to the regulator to provide a firmer steer on the importance of public sector funding considerations without making any legislative changes.

### Option not suitable/discounted

- This has been discounted as a preferred option as a duty is more explicit than guidance. It needs to be clear that funding must be considered in decision-making and must be considered alongside the other duties.
- A legislative amendment supports the embedding of the importance of public sector funding considerations being given greater weighting in decision-making in the long-term.

### Option 2 (preferred option): Widen the scope of ORR's Competition Duty using legislation

Use primary legislation to recast ORR's existing competition duty in existing legislation to ensure that ORR consider and provide evidence that the taxpayers' perspective is being taken into account, in addition to the service user perspective, when making access decisions for rail passenger services.

- This is the preferred option as it will strengthen the obligation on ORR to consider the public funding impact.
- Additionally, this option retains the independence of the regulator. ORR's Competition Act functions will not be affected by this change.

## Summary and preferred option with description of implementation plan

Under primary legislation, ORR's section 4 duty under the Railways Act 1993 will be amended as below:

*(1) Section 4 (general duties of the Secretary of State and the Office of the Rail and Road) is amended as follows. (2) In subsection (1)(d), at the end insert [so far as such competition does not [unreasonably] increase the cost to public funds of providing carriage of passengers by railway]”.*

These arrangements will be commenced by regulations and will not come into force until after the Bill has received Royal Assent. The ORR will be responsible for the ongoing operation and enforcement of the new arrangements. The ORR will continue to be responsible for providing guidance on how they make track access decisions.<sup>8</sup>

The ORR decisions will continue to be independent judgements based on all their statutory duties. ORR's Competition Act functions will not be affected by this change.

The Secretary of State will update the Guidance to the regulator to provide additional steers to the regulator on what this revised duty is intended to achieve. The latest Guidance can be accessed here: [Railways: guidance to the Office of Rail and Road](#)<sup>9</sup>.

## **Monetised and non-monetised costs and benefits of each option (including administrative burden)**

### **Monetised costs and benefits:**

In line with the proportional approach taken when producing this IA, given that the change extends the duties of the regulator to balance additional interests, the impact on the railway operations is, by design, not fixed. Therefore, the costs and benefits have not been quantified and monetised.

### **Non-monetised costs and benefits:**

**Option 0 – Do Nothing: No changes to ORR's section 4 competition duty in the Railways Act 1993 or update the Secretary of State's Guidance to the regulator.**

This is the counterfactual in this impact assessment against which the other options have been assessed.

### **Option 1- Do Something: Update the Secretary of State Guidance to the regulator**

#### ***Benefits:***

- There is likely to be some consideration of cost to public funds given when the ORR considers new passenger access application.

#### ***Costs:***

- This does not have the same level of weight as a legislative duty has, and therefore could be open to interpretation.

**Options 2 - Do Something:** Recast the Office of Rail and Road's Competition Duty to give consideration to public funding to access application decisions (preferred option)

#### ***Benefits:***

- This gives ORR the requirement to consider the cost to public funds in new access applications.

#### ***Costs:***

- The administrative burden on the ORR and would-be OAOs (those interested in applying to be OAOs) will potentially increase. This has not been quantified but the Government would expect this to be less costly than potential benefits.

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<sup>8</sup> Track access guidance | Office of Rail and Road ([orr.gov.uk](http://orr.gov.uk))

<sup>9</sup> [Railways: guidance to the Office of Rail and Road - GOV.UK \(\[www.gov.uk\]\(http://www.gov.uk\)\)](https://www.gov.uk/government/guidance/railways-guidance-to-the-office-of-rail-and-road)

The costs and benefits associated with different stakeholders for Option 2 are considered in the table below.

**Table 7:**

Stakeholder	Costs	Benefits
ORR	<ul style="list-style-type: none"> <li>One off familiarisation costs.</li> <li>Additional operational and administrative costs associated with change to competition duty.</li> </ul>	<ul style="list-style-type: none"> <li>Increased opportunity to achieve Government's objective of promoting competition in the industry and delivering value for money.</li> </ul>
OAOs	<ul style="list-style-type: none"> <li>May face a more competitive process when bidding for contracts/routes.</li> <li>Potential for additional administrative costs.</li> </ul>	<ul style="list-style-type: none"> <li>Greater certainty and clarity relating to access decisions, based on principles of competition and value for money</li> </ul>
Wider government	<ul style="list-style-type: none"> <li>Potential for additional administrative costs.</li> </ul>	<ul style="list-style-type: none"> <li>Correction of existing government failure.</li> <li>Taxpayer and public funding considerations greater weight when making access decisions.</li> </ul>

## Risks and assumptions

- The duty should not reduce the number of successful OAO applications, unless the proposed OAO service is detrimental to public funding. ORR and OAOs will have the opportunity to demonstrate that services do not unreasonably impact public funds.
- An increase in the administrative burden on the ORR and prospective OAOs. OAOs may have to gather stronger evidence when making their bid.
- The efficiency of rail markets with high numbers of passenger service operators could deteriorate if there is a reduction in competition on the railways but this is unlikely.

## Wider Impacts

- Should some open access operators be denied access rights because of this additional duty then wider **negative** impacts could arise as follows:
  - Some consumers could lose out on a more attractive service;
  - The efficiency of railway markets dominated by contracted passenger service operators could deteriorate due to a potential reduction of competition.
- Should some open access operators be denied access rights because of this additional duty then wider **positive** impacts could arise as follows:
  - Revenue streams to the contracted passenger service operator will be protected thus increasing the sustainability of the routes served by the Government.

The addition of this duty is not expected to have any implications for trade.

## Impact on small and micro, and medium businesses

The addition of this duty will primarily impact train operating companies (TOCs) in the UK. As shown below, TOCs including open access operators (OAOs) all exceed the micro business threshold in terms of employees (<9) and the small business threshold (<49). Although one TOC and all OAOs have fewer

employees than the government's threshold for consideration of exemptions or mitigations (499), we do not consider exemptions necessary, and some mitigations are possible.

The following table from the ORR shows that almost all franchised train operating companies are large employers with over 500 employees, and on average several thousand. Number of employees of train operating companies as of March 31<sup>st</sup>, 2023:

**Table 8: Number of TOC employees**

<b>Train operating company<sup>10</sup></b>	<b>Number of employees</b>
Govia Thameslink Railway	7,245
Northern Trains	6,912
Great Western Railway	6,185
South Western Railway	5,217
ScotRail	4,968
Southeastern	4,481
Avanti West Coast	3,297
London North Eastern Railway	3,240
TfW Rail	2,993
West Midlands Trains	2,948
Greater Anglia	2,792
East Midlands Railway	2,410
CrossCountry	1,854
TransPennine Express	1,602
London Overground	1,505
Elizabeth line	1,277
Merseyrail	1,225
Chiltern Railways	866
c2c	639
Caledonian Sleeper	198

All OAOs have fewer than 500 employees, and on average between one hundred and two hundred in total. Number of employees of open access operators as of March 31<sup>st</sup> 2023.

**Table 9: Number of TOC employees (open access)**

<b>Train operating company (open access)</b>	<b>Number of employees</b>
Heathrow Express <sup>11</sup>	169
Grand Central	142
Hull Trains	104
Lumo	100

We have considered exemptions or mitigation for impacted businesses with fewer than 499 employees. In the case of extending the ORR's competition duty this would involve exempting OAOs, the main target group of the intervention. This would not allow the majority of benefits to be realised with an exemption. The extended duty may incur some burden on OAOs by changing how they apply for access. Bids may require stronger evidence under the extended duty regarding the impact on public funds.. Further, the extended duty may result in fewer successful OAO access applications if the regulator deems the impact on public funds to be an unreasonable cost. . It has been assessed that this does not present a

<sup>10</sup> Table 2233 - Full-time equivalent (FTE) employees by operator, as of March 2023. <https://dataportal.orr.gov.uk/statistics/compendia/toc-key-statistics/>

<sup>11</sup> Heathrow Express also operates services on an open access basis but on the basis of a bespoke access and contractual regime agreed pre-privatisation, which is quite distinct from other operators on the network.

disproportionate burden on OAOs, as bidding for access only occurs when the operating company first wants to access the network, or if they wish to expand and access other part of the network.

Freight and Heritage Rail operators are out of the scope of this policy, so impacts have not been analysed.

## **Monitoring and Evaluation**

The Department for Transport is developing a structured benefits management approach to measure, monitor and report on the progress of the programme. We are also progressing further work to scope additional evaluation activity, which is likely to involve an evaluation scoping study to assess data requirements and explore impact evaluation methods. Evaluation of the reforms is likely to draw on a range of data sources, such as passenger surveys and internal monitoring data, as well as bespoke data collection.

Given the proposed changes in this impact assessment are minor and of a technical nature, we do not consider a separate post-implementation review plan to be proportionate. The proposed changes will be evaluated as part of broader rail reform.



## Annex E

<b>Title:</b> Amendment to Regulation 16 in the Access, Management and Licensing of Railway Undertakings Regulations 2016 <b>Lead department or agency:</b> Department for Transport <b>Other departments or agencies:</b> N/A			<b>Impact Assessment (IA)</b>	
			<b>Date:</b> January 2024	
			<b>Stage:</b> Final	
			<b>Source of intervention:</b> Domestic	
			<b>Type of measure:</b> Primary legislation	
			<b>Contact for enquiries:</b> railreform.bill@dft.gov.uk	
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> Not Applicable	
<b>Cost of Preferred (or more likely) Option</b> (in 2019 prices)				
<b>Total Net Present Social Value</b>	<b>Business Net Present Value</b>	<b>Net cost to business per year</b>	<b>Business Impact Target Status</b>	
NQ	NQ	NQ	Not a regulatory provision	
<b>What is the problem under consideration? Why is government action or intervention necessary?</b>				
<p>When the Integrated Rail Body (IRB) is stood up, responsibility for franchising, including managing passenger services contracts such as National Rail Contracts (NRCs), will transfer from the Secretary of State for Transport to the IRB. Bringing track and train together under the IRB will require amendments to the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the 2016 Regulations).</p> <p>The existing requirements in the 2016 Regulations prevent the IRB, as both infrastructure manager and franchising authority, from being able to manage contracts in the same way that the Department for Transport (DfT) does today as franchising authority. If no action is taken, contracts will need to be renegotiated to avoid the risk of non-compliance with the 2016 Regulations, which would have cost implications for government and impacted train operating companies (TOCs) and could be challenging and lengthy to agree.</p> <p>To enable the transfer of existing passenger services contracts, rather than seek to renegotiate these contracts, we propose a limited exemption to Regulation 16 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the 2016 Regulations), which would exempt the IRB and TOCs contracted by the IRB from the obligation of making payments to each other under the performance scheme. This means that the IRB and its directly contracted TOCs will no longer be required to pay each other under the performance scheme, but will still be held to account through the other existing performance scheme provisions in the 2016 Regulations as well as the performance incentives set out in passenger services contracts (including National Rail Contracts).</p>				

**What are the policy objectives of the action or intervention and the intended effects?**

The policy objective of the action to exempt the IRB and its directly contracted operators from the requirement to pay each other under the performance schemes in regulation 16, is to enable a continued functioning performance scheme between the IRB and its contracted operators that minimises disruption of the network and improves performance.<sup>12</sup> This will ensure that there is no wider impact to other operators and infrastructure managers. The policy must allow the transfer of franchising functions and of passenger services contracts, enabling the IRB to operate as the intended strategic decision-making body responsible for franchising and infrastructure.

Therefore, the intended effects of the preferred option are to:

- Enable current passenger services contracts (including National Rail Contracts) to transfer from the Secretary of State (SoS) to the IRB without changing them.
- Retain structures to monitor, understand and improve performance across the whole system. These include the performance incentives held within passenger services contracts (including National Rail Contracts) to which the IRB and its contracted operators will remain parties.
- Have no impacts on the payments made between the IRB (assuming infrastructure responsibilities from Network Rail today) and other operators – including freight operators, open access operators and operators contracted to deliver passenger services by other franchising authorities. There would also be no impact on payments made as a result of IRB operators causing or being impacted by delays to other TOCs.
- Have no impact on financial payments associated with the performance schemes for other infrastructure managers.

The preferred option has been considered in further detail within this impact assessment.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Option 0 - Do Nothing** – No exemption for the IRB from part of regulation 16 of the 2016 Regulations.

**Option 1 (preferred option)** - Exemption from payments under regulation 16 of the 2016 Regulations. This exemption is limited only to the performance scheme payments between the IRB and TOCs contracted by the IRB to run passenger services on its behalf. This option will achieve the policy objectives outlined above, while preserving existing performance incentives from passenger services contracts (including National Rail Contracts) and other provisions in the 2016 Regulations to ensure that the IRB and its contracted operators remain held to account. We also prefer the proposed option as any potential further changes to the Regulations 2016 could be better achieved through secondary legislation using the power to amend the 2016 Regulations.

**Option 2** - Full scale amendment of regulation 16 of the 2016 Regulations to create a different performance scheme system for the IRB. Under this option, the government would make wholesale amendments using primary legislation to regulation 16 of the 2016 Regulations to create a new performance scheme system for the IRB.

**Will the policy be reviewed?** It will be reviewed when rail reform is evaluated.

**If applicable, set review date:** TBC

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	Micro No	Small No	Medium No	Large Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		Traded: N/A		Non-traded: N/A

*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 by the responsible Minister:



Date:

20/02/2024

<sup>12</sup> Here, disruption refers to that caused by the renegotiation of contracts necessary to enable contracts to be transferred to the IRB without amendment to regulation.

## Summary: Analysis & Evidence

## Policy Option 1

**Description:** Create a limited exemption for only the IRB and its directly contracted operators from the payments made between each other that are required by the performance schemes held in regulation 16 of the 2016 Regulations. This will enable the transfer of franchising contracts to the IRB (**preferred option**).

### FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	NQ		NQ	NQ	
High	NQ		NQ	NQ	
Best Estimate	NQ		NQ	NQ	
Description and scale of key monetised costs by ‘main affected groups’					
Costs have not been monetised in this impact assessment. Further description of costs and justification for this is included in the Evidence Base section.					
Other key non-monetised costs by ‘main affected groups’					
Government: Implementation cost of legislative changes.					
Business: Implementation costs for TOCs directly contracted by the IRB including administrative and familiarisation costs (likely to be one-off and minimal).					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	NQ		NQ	NQ	
High	NQ		NQ	NQ	
Best Estimate	NQ		NQ	NQ	
Description and scale of key monetised benefits by ‘main affected groups’					
Benefits of this option are not monetised.					
Other key non-monetised benefits by ‘main affected groups’					
Government: The IRB can fulfil its role of franchising authority, with the transfer of contracts from SoS to the IRB while avoiding the need to renegotiate existing contracts.					
Consumers: Unlikely to adversely impact services as the performance scheme will have the same impact as before stand-up of the IRB at the system level.					
Business: Wider performance is unlikely to be adversely impacted from proposed amendments to the 2016 Regulations. It will not impact the status quo for non-IRB-contracted TOCs such as freight or open access operators. Across all groups, the IRB will also continue to be held to account for performance through existing measures and its obligations as the strategic decision-making body. This is explained further in our evidence base.					
Key assumptions/sensitivities/risks				Discount rate (%)	N/A
Costs and benefits of the Do Minimum option have not been quantified in this impact assessment. As option 1 results in a continuation of the current position under NRCs between SoS and TOCs, costs and benefits are expected to be minimal and therefore have only been described qualitatively. It is assumed that creating an exemption from payments between the IRB and its directly contracted TOCs will not impact performance across the system. It is also assumed that the amendment, under Option 1, would prevent the need to negotiate new commercial agreements (necessary under Option 0) and the costs associated with this.					
We do not anticipate any specific risks caused by this amendment.					

### BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NQ	Benefits: NQ	Net: NQ	N/A

## Summary: Analysis & Evidence

## Policy Option 2

**Description:** Do Something: Full scale amendment using primary legislation of regulation 16 to create a different performance scheme system for the IRB.

### FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	NQ		NQ	NQ	
High	NQ		NQ	NQ	
Best Estimate	NQ		NQ	NQ	
Description and scale of key monetised costs by ‘main affected groups’					
Costs have not been monetised in this impact assessment. Further description of costs and justification for this is included in the Evidence Base section.					
Other key non-monetised costs by ‘main affected groups’					
Government: Implementation cost of making wider legislative changes to regulation 16.					
Consumers: Unlikely to adversely impact services.					
Business: Implementation costs, for example wider legislative changes to performance schemes, may result in administrative and legal costs to businesses.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	NQ		NQ	NQ	
High	NQ		NQ	NQ	
Best Estimate	NQ		NQ	NQ	
Description and scale of key monetised benefits by ‘main affected groups’					
Benefits of this option have not been monetised in this impact assessment.					
Other key non-monetised benefits by ‘main affected groups’					
Government: Passenger services contracts including NRCs are able to transfer from SoS to the IRB. Wider changes to performance schemes may deliver additional benefits.					
Consumers: Making a legislative amendment is unlikely to impact services for consumers, so long as they are implemented over a clear timeline.					
Business: Businesses may experience wider benefits if changes deliver an improved performance scheme for the IRB.					
Key assumptions/sensitivities/risks				Discount rate (%)	N/A
For this option, the costs and benefits have been described qualitatively only. Option 2 considers making wider changes to regulation 16 (making wider changes to performance schemes as a result), beyond the minimum required to establish the IRB. Changes to the Regulations 2016 made through primary legislation in this option could also be achieved through secondary legislation using the power to amend the 2016 Regulations. No further changes to regulation 16 have been identified as necessary at this time to ensure continued railway performance, so this option may not be necessary to allow establishment of the IRB and deliver benefits from the Plan for Rail White Paper.					

### BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NQ	Benefits: NQ	Net: NQ	• N/A

# Evidence Base

## Background

This impact assessment supports the objectives of the Rail Reform Bill which takes forward legislative measures on reform to the rail industry, following publication of the Plan for Rail White Paper.

When the IRB assumes the role of Franchising Authority from the SoS, contracts for passenger services (e.g. National Rail Contracts) will transfer from the Department for Transport to the IRB (explored further in the overarching impact assessment). The IRB's role as Infrastructure Manager (IM) will comprise management of the rail network currently owned by Network Rail.

Legislation defines many aspects of how IMs and operators running passenger or freight services should engage. The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 ("the 2016 Regulations") contain the detailed rules, processes, and procedures for how the railway must operate. Requirements concerning Performance Schemes are set out in regulation 16 of the 2016 Regulations. The purpose of these schemes is to minimise disruption and improve performance through financial incentives. Regulation 16 of the 2016 Regulations specifies the need for a single 'monetised' performance scheme that involves payment between the IM and operators (passenger and freight), and which applies to all users of the railway.

The current contractual agreements between SoS and its directly contracted operators protect the train operating companies (TOCs) from the financial impacts of performance regimes. These operators have limited direct financial risk exposure (e.g. they hold no revenue risk) – so are not financially responsible for payments made through the performance regime to reflect any disruption they experience or cause. Any compensatory payments received by the TOC under the performance regime are passed back to DfT (acting on behalf of SoS) under the contractual terms. Any payments required to be made by the TOC will be covered by an associated payment by DfT (acting on behalf of SoS) to the TOCs as part of contractual costs recovery arrangements between the franchising authority and franchisee.

## Problem under consideration and rationale for intervention

Regulation 16 of the 2016 Regulations requires financial payments to be made between the infrastructure manager and each operator as part of the performance schemes. However, for payments between the infrastructure manager (the IRB) and its directly contracted TOCs, these financial payments originate from and would be passed back to the same legal entity (the IRB). This circular payment flow would risk the IRB being in breach of regulation 16, as the payments would not constitute part of an effective performance incentive scheme.

Without a change in regulation 16 of the 2016 Regulations, the current passenger services contracts held by SoS could not transfer to the IRB without a significant risk that the IRB would be in breach of regulation 16. This would mean that the contracts would need to be renegotiated to enable transfer, with cost implications for government and impacted TOCs.

Intervention is therefore needed to prevent the current regulations causing issues such as the need to renegotiate passenger services contracts to enable their transfer to the IRB.

## Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)

This impact assessment presents non-monetised impacts for the costs and benefits and wider economic impacts of this proposal, to demonstrate the scale of the proposal's impacts for the government. We believe it is not proportionate to monetise all costs and benefits because we envisage the legislative change to be small and unlikely to have large impacts. Instead, the costs and benefits of policy options for businesses and consumers are described qualitatively.

The proposed amendment to regulation 16 of the 2016 Regulations set out in the preferred option is not expected to have direct costs on businesses. Furthermore, the proposal is not expected to have distributional impacts, place disproportionate burdens on small businesses, or create significant wider social, environmental, financial, or economic impacts.

## **Policy objective**

The policy objective is to enable a continued functioning performance scheme between the IRB and its contracted operators that minimises disruption and improves performance. A key indicator of success will be ensuring that there is no wider impact to operators and other infrastructure managers. The policy must also allow the transfer of franchising functions and of passenger services contracts, enabling the IRB to operate as the intended strategic decision-making body responsible for franchising and infrastructure.

## **Description of options considered:**

### **Option 0 - Do Nothing:**

- Make no changes to the current regulations, meaning that the existing contracts could not be transferred in their current form without the IRB breaching regulation 16. If aspects of the contracts currently held by DfT are renegotiated, this may enable the contracts to transfer to the IRB, but this would have cost implications for government and impacted TOCs – and may be challenging to agree.

### **Option 1 – Create a limited exemption from regulation 16 of the 2016 Regulations to enable the transfer of franchising contracts to the IRB. (Preferred option)**

- A limited exemption is made for the IRB and its directly contracted TOCs from the requirement to make financial payments to each other under the performance schemes contained in the 2016 Regulations. This will enable passenger services contracts (including National Rail Contracts) to be transferred from SoS to the IRB and the delivery of reforms. Current incentives held within contracts will continue when the franchising functions of the Secretary of State are transferred to the IRB.
- The exemption would only apply to financial payments - wider elements of the performance regime would still apply to the IRB and its TOCs in full, and there would be no change in the requirements or amounts of payments between the IRB and other operators, such as freight operators, open access operators or those contracted by other franchising authorities. The exemption would also not impact infrastructure managers other than the IRB. Where it is the franchising authority, the IRB will be held accountable for whole system performance to drive improvements for passengers and freight customers.
- Secondary legislation is better suited to the type of amendments we could make with regard to performance schemes and hence this preferred option 1 only seeks to make a minimum necessary minor amendment through the Bill. Potential future changes could be achieved through the proposed power to amend the 2016 Regulations, better utilising the flexibility given by secondary legislation.

### **Option 2 – Full scale amendment using primary legislation of regulation 16 to create a different performance scheme system for the IRB.**

- Wholescale amendments to regulation 16 of the 2016 Regulations using primary legislation to create a new performance scheme system for the IRB. This would require re-design and renegotiation of the current performance incentive regime with TOCs, which is not essential for the establishment of the IRB when also considering that the IRB's performance will be effectively managed through existing measures within the 2016 Regulations and inherited passenger services contracts (including National Rail Contracts).
- Changes made through primary legislation in this option could also be achieved through secondary legislation using the power to amend the 2016 Regulations proposed in the Bill.
- This Option is likely to impact all operators using the IRB's infrastructure, not just those contracted by the IRB to run services on behalf of the IRB.

## **Summary and preferred option with description of implementation plan**

Option 0 has been discounted as it does not deliver the policy objectives of enabling the IRB to fulfil its role as a franchising authority without requiring changes to the current contracts. Depending on the outcome of the renegotiation of current contracts, there may be recurring costs additional to those today.

Option 1 is the preferred option as it delivers the policy objectives whilst minimising implementation costs or disruption to wider businesses.

Option 2 was not suitable because it would involve further legislative change than is deemed necessary at this point in time and would be disproportionate to accomplishing the policy goal of enabling the creation of the IRB while keeping the IRB accountable for performance. Option 2 would also not be suitable since secondary legislation is better suited to the types of amendments we could make.

### **Implementation**

The preferred option will be given effect through primary legislation. This will come into effect when the IRB assumes the role of franchising authority and contracts are transferred from SoS to the IRB. The proposed amendment to regulation 16 of the 2016 Regulations will make the IRB and the TOCs contracted by the IRB to run passenger services exempt from the requirement to pay each other under the performance schemes in regulation 16.

All other aspects of the performance scheme requirements will remain unchanged for the IRB and its operators, as well as wider operators on the IRB's network, such as monitoring delays and attributing delays to causes and parties.

There will be no financial impact on non-IRB operators as a result of the preferred option as the existing performance regime for these operators will be maintained as today. This includes operators franchised by devolved authorities, freight operators and open access operators.

## **Costs and Benefits**

### **Monetised costs and benefits of each option (including administrative burden)**

No quantitative analysis was undertaken to assess the costs and benefits of the options in view of taking a proportionate approach. Therefore, in this section, we qualitatively describe the costs and benefits of each option.

### **Non-monetised costs and benefits**

**Option 0 – Do Nothing:** Regulation 16 of the 2016 Regulations is left unchanged. This is the counterfactual in this impact assessment against which the other option has been assessed.

#### **Costs:**

- **Government:** If the government made no legislative change to regulation 16, passenger services contracts (like NRCs) would be unable to transfer from SoS to the IRB without the risk of putting the IRB in breach of the requirements in regulation 16 (requiring payments to be made under the performance schemes). This would limit the delivery of the Plan for Rail and associated benefits. The transfer of contracts may still be possible without a change to regulation 16 of the 2016 Regulations if government renegotiated NRCs and retained the performance scheme with financial payments under the performance schemes for the IRB and all operators but this would have cost implications.
- **Business:** If the government decided to renegotiate its contracts, this would also impose administration costs on industry, specifically TOCs who would need to engage in the process.

#### **Benefits:**

- **Government:** No administrative burden of implementing changes through legislation and preservation of the existing performance schemes regulation.
- **Consumers:** No impact as the performance scheme would be maintained and therefore there is no fall in service assumed.
- **Business:** Operators who are not directly contracted by SoS / the IRB would be unaffected by the changes made in this option – and so would not incur direct costs.

**Option 1 – Do Minimum:** Create an exemption from the regulations 16 of the 2016 Regulations to enable the transfer of franchising contracts to the IRB. **(Preferred option)**

#### **Costs:**

- **Government:** Administration and implementation cost of legislative changes.
- **Business:** Small and negligible cost associated with implementing this policy for operators contracted directly by SoS / the IRB only.

#### **Benefits:**

- **Government:** Passenger services contracts, including NRCs, are able to transfer from SoS to the IRB. This will facilitate the smooth progression of rail sector reform outlined in the government's Plan for Rail White Paper. It also best utilises the flexibility to provide future changes to performance schemes regulation through secondary legislation, which will allow for proper consideration across wider components of the railway system.
- **Consumers:** No detrimental impact to passengers or other customers of the rail network.
- **Business:**
  - TOCs contracted by the IRB are able to run passenger services under their current contracts whilst remaining in compliance with regulation 16.
  - No impact to wider operators from the change to regulation 16 as the performance scheme will operate in the same way as before the IRB for these operators. Financial payments between the IRB and non-directly-contracted operators (e.g. freight, open access operators, operators contracted by other franchising authorities) will be unaffected by this change.
  - Other infrastructure managers will not be impacted by this change, minimising wider costs to implement or adjust to a new performance scheme.

**Option 2 – Do Something:** Full scale amendment using primary legislation of regulation 16 to create a different performance scheme system for the IRB.

#### **Costs:**

- **Government:** Administration and implementation cost of making legislative changes to the full performance scheme.
- **Consumers:** The policy is unlikely to adversely impact services if implemented over a clear timeline.
- **Business:** Implementation costs, for example wider legislative changes to performance schemes, may result in administrative and legal costs to businesses.

#### **Benefits:**

- **Government:** Contracted passenger services are able to transfer from SoS to the IRB and operate without the risk of breaching regulations. Wider changes to the performance schemes could also be introduced simultaneously, with the potential to deliver additional benefits.
- **Consumers:** Wider legislative changes could enable a different approach to improve performance and operations across the sector, which may result in improved services for passengers.
- **Business:** Businesses will benefit from clear amendments to the performance scheme system e.g. to address issues around delay attribution and incentivisation.

### **Direct costs and benefits to business calculations**

No quantitative analysis was undertaken to assess the costs and benefits of the options, though we anticipate minimal costs to businesses beyond familiarisation costs to industry and administrative costs. The benefits of the proposed legislative amendments will enable the IRB to be a fully integrated body operating in line with the amended Regulations 2016. This will offer clarity and continuity to businesses. The proposed amendments will not apply to rail freight customers, open access that are not running services on behalf of the IRB or heritage operators so the status quo will remain for businesses that come under these remits.

### **Risks and assumptions**

If the content of the transferred passenger services contracts from SoS to the IRB would make the IRB or the TOCs running services on behalf of the IRB not compliant with the 2016 Regulations, there would be a risk of legal challenge.



Under Option 1, it is assumed that creating an exemption from the requirement that performance-related payments must be made between the IRB and its directly contracted operators will have no wider impact on performance across the system.

Under Option 2, it is assumed that the changes described could be made either through primary legislation or secondary legislation enabled by the power to amend the 2016 regulations.

### **Impact on small and micro, and medium businesses**

This proposal is not expected to have a significant impact on small, micro, or medium businesses with up to 499 employees. As set out above, the direct costs to businesses of this proposal are expected to be limited. Further, the proposal is not expected to impact the service provided by the TOCs or their operations.

The following table shows the size of franchise TOCs operating in the market, by number of employees.<sup>1</sup> The average TOC has several thousand employees and exceeds the 499 employees medium business threshold. Only one TOC has below the 499 employees threshold, however as previously stated, this proposal is not expected to have significant impacts on small, micro or medium businesses. Therefore, it is assumed that no small micro, or medium businesses will be significantly impacted by this proposal.

**Table 10: number of employees (for DfT contracted TOCs only)**

<b><u>Train operating company</u></b>	<b><u>Number of employees</u></b>
Govia Thameslink Railway	7,245
Northern Trains	6,912
Great Western Railway	6,185
South Western Railway	5,217
Southeastern	4,481
Avanti West Coast	3,297
London North Eastern Railway	3,240
West Midlands Trains	2,948
Greater Anglia	2,792
East Midlands Railway	2,410
CrossCountry	1,854
TransPennine Express	1,602
Chiltern Railways	866
c2c	639
Caledonian Sleeper	198

### **Wider impacts**

An exemption from payments under regulation 16 of the 2016 Regulations is not expected to result in any wider impacts and should result in the same level of service being provided by TOCs.

### **A summary of the potential trade implications of measure**

An exemption from payments under regulation 16 of the 2016 Regulations is not expected to impact the service provided by TOCs or have any implications for trade.

### **Monitoring and Evaluation**

The Department for Transport is currently developing a structured benefits management approach to measure, monitor and report on the progress of the programme. Further work to scope additional

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<sup>1</sup> Table 2233 - Full-time equivalent (FTE) employees by operator, as of March 2023.

<https://dataportal.orr.gov.uk/statistics/compendia/toc-key-statistics/> N.B. only TOCs where DfT is the current franchising authority are included, as only they will be directly impacted by the preferred option.

evaluation activity, involving an evaluation scoping study to assess data requirements and explore impact evaluation methods is ongoing. Evaluation of the reforms is likely to draw on a range of data sources, such as passenger surveys and internal monitoring data, as well as bespoke data collection. Given the proposed changes in this impact assessment are minor and of a technical nature, we do not consider a separate post-implementation review plan to be proportionate. The proposed changes will be evaluated as part of broader rail reform.

## Annex F

<p><b>Title:</b> Power to make or amend rail markets legislation in the Rail Reform Bill.</p> <p><b>RPC Reference No:</b> RPC-DFT 5301(1)</p> <p><b>Lead department or agency:</b> Department for Transport</p> <p><b>Other departments or agencies:</b> N/A</p>	<p><b>Impact Assessment (IA)</b></p> <p><b>Date:</b> January 2023</p> <p><b>Stage:</b> Final</p> <p><b>Source of intervention:</b> Domestic</p> <p><b>Type of measure:</b> Primary legislation</p> <p><b>Contact for enquiries:</b> railreform.bill@dft.gov.uk</p>
<p><b>Summary: Intervention and Options</b></p>	<p><b>RPC Opinion:</b> Green</p>

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Qualifying provision
NQ	NQ	NQ	
<p><b>What is the problem under consideration? Why is government action or intervention necessary?</b></p> <p>The Government wants a less fragmented, more efficient railway. This will likely require future amendments to specific rail legislation.</p> <p>However, there is no long-term mechanism for the Government to make amendments, outside of primary legislation. Government intervention is necessary as using primary legislation would be disproportionately time-consuming for the frequent and technical types of amendments required.</p> <p>The Government proposes to include a delegated power which will enable the making or amending of specific rail markets legislation to ensure it is up to date. This would allow the use of the affirmative statutory instrument process to modify certain regulations, including the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (Access and Management Regulations) and the Railway (licensing of Railway Undertakings) Regulations 2005.</p>			
<p><b>What are the policy objectives of the action or intervention and the intended effects?</b></p> <p>The power would give long-term certainty that the Government can amend certain relevant regulations. This ensures that Government can implement rail reform objectives, keep rail markets legislation current, and enable new legislative frameworks, if needed, for future rail projects.</p> <p>Rail markets legislation sets out the detailed rules, roles and responsibilities for the management of the rail network, including access and charging for the network and services required to run trains. As management of the network evolves, Government will need to be able to update the regulations, in a timely manner, to reflect those changes.</p> <p>It is not efficient for detailed aspects of the operations of rail market regulations to require primary legislation every time an amendment is needed.</p>			

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Option 0** – Do nothing – Use non-legislative means where viable to deliver rail reform objectives on access and use of the railway. This option is unable to support the delivery of reform as non-legislative means would not be able to override the existing legislation which act as a constraint to the changes that reform entails, nor will it enable the Government to respond to developments in the rail market.

**Option 1** – Implement required amendments to rail markets legislation via primary legislation to deliver rail reform objectives on access and use of the railway. Primary legislation is costly and inefficient to deliver a programme of reform that may require several changes in legislation.

**Option 2 (Preferred Option)** – Include a power in primary legislation that enables Government to make amendments to rail markets regulations through secondary legislation to deliver rail reform objectives on access and use of the railway. This is the preferred option as it enables longer term changes to be implemented should they become necessary as the railway develops and evolves.

**Will the policy be reviewed? Yes** **If applicable, set review date:** Five years following designation of the IRB via secondary legislation.

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		Traded: N/A	Non-traded: N/A	

***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 by the responsible: Minister



Date:

20/02/2024

# Summary: Analysis & Evidence

## Policy Option 1

**Description:** Implement required amendments to rail markets legislation via primary legislation.

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ		NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

### Description and scale of key monetised costs by 'main affected groups'

It has not been possible to monetise all costs in this impact assessment given the nature of the proposed intervention. This impact assessment does not include any monetised costs as quantification would rely on inherently uncertain and hypothetical scenarios of future regulatory interventions.

### Other key non-monetised costs by 'main affected groups'

**Government:** Administration cost of making a minor amendment to regulations via primary legislation.

**Business:** Administrative and legal costs of implementing new legislation.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ		NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

### Description and scale of key monetised benefits by 'main affected groups'

Costs have not been monetised in this impact assessment. If the power to amend is not established, then any and all amendments will need to be made by primary legislation. These amendments would also be accompanied by an impact assessment at the point of introduction. Any quantification in this impact assessment would rely on hypothetical scenarios of future regulatory interventions and would therefore be highly speculative.

### Other key non-monetised benefits by 'main affected groups'

The scale of non-monetised benefits of the proposed policy is not fully known, due to the inherent uncertain nature of future regulatory interventions.

Key assumptions/sensitivities/risks (%)	Discount rate
For this option, the costs and benefits have been described qualitatively only.	
There may be sensitivities for industry around implementation costs.	

## BUSINESS ASSESSMENT (Option 5)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NQ	Benefits: NQ	Net: NQ	
			• N/A

# Summary: Analysis & Evidence

## Policy Option 2

**Description:** Include a power to amend rail markets legislation in the Bill (**preferred option**).

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ		NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

### Description and scale of key monetised costs by 'main affected groups'

Costs have not been monetised in this impact assessment, given that this policy is establishing a power to amend existing legislation. The use of this power will be dependent on the needs of future policy. Any quantification at this point would rely on hypothetical scenarios of future regulatory interventions and would therefore be highly speculative. However, any amendments to legislation made under this power would be required to be laid before Parliament via affirmative secondary legislation. An impact assessment will be provided alongside any future statutory instrument (SI) to reflect monetised costs and benefits.

### Other key non-monetised costs by 'main affected groups'

The scale of non-monetised benefits of the proposed policy is not fully known, due to the inherent uncertain nature of future regulatory interventions. The proposed power to amend will realise the benefits of exiting the EU and implement simplifications and benefits for passenger and freight operators in the long term.

**Government:** Administration cost of making a minor amendment to the regulations.

**Business:** Administrative and legal costs associated with implementing new regulations.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ		NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

### Description and scale of key monetised benefits by 'main affected groups'

Benefits of this option are not monetised. Expected benefits will be to railways operators and infrastructure managers, in terms of efficiency gains, and to passengers who may face reduced costs and better passenger experience.

### Other key non-monetised benefits by 'main affected groups'

Subject to the power to amend being available via the Rail Reform Bill, the Secretary of State will make or implement amendments to existing legislation via affirmative secondary legislation, as the vehicle in which to implement amendments to rail markets legislation. An impact assessment will be provided alongside any future secondary legislation to capture any monetised benefits.

### Key assumptions/sensitivities/risks

The specific risks and impacts of policies will be considered in detail in the impact assessments accompanying future secondary legislation. Given the uncertainty over the specifics of future policies, we have been unable to assess specific impacts at this early stage.

### Discount rate (%)

For this option, the costs and benefits have been described qualitatively due to inherent uncertainty of the nature and manner in which reform will be implemented.

There may be sensitivities for industry around implementation costs.

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NQ	Benefits: NQ	Net: NQ	
			• N/A

## 1.0 Policy Rationale

### 1.1 Background

The purpose of the Bill is to enable the establishment of an integrated rail body (IRB), which brings together Network Rail's role as infrastructure manager, and the Department for Transport's role as franchising authority.

Rail legislation has not been updated in a comprehensive and holistic way since privatisation in 1993, at which point legislation was introduced which required separate bodies to be responsible for different aspects of running the railway. Today, the railways are not fit for purpose and have suffered from spiralling costs, exacerbated by the coronavirus (COVID-19) pandemic, and fragmented accountability. The railways receive large government subsidies and therefore HMG has a direct interest in the efficiency of the rail system and ensuring value for money is secured for the taxpayer, by maximising benefits to passengers and other users.

The benefit of an integrated rail body is the establishment of a simpler industry structure, with a strategic decision-making body that is responsible for the delivery of rail infrastructure and operation. There is a separate impact assessment that analyses the impact of the establishment of the IRB, while this impact assessment is specific to the proposed power.

Since existing legislation requires a level of separation and independence between an infrastructure manager and railway undertakings, it inevitably contains barriers to the integration of an infrastructure manager and the franchising authority. The Bill itself makes several amendments to existing legislation to allow for integration. As policy objectives for rail networks evolve, the ability to make future amendments to rail market regulations will continue to be critical to removing barriers or accommodating an integrated rail body efficiently.

The proposed power seeks to enable the Government to make and amend rail markets legislation via secondary legislation. The key aims are to:

- Remove barriers to rail reform;
- Maintain compliance with international agreements;
- Enable the Government to support further reforms to the railway, by ensuring amendments can be made in a timely manner.

### 1.2 Scope of the power

The scope of the draft power is specified in the draft Bill and is also set out in more detail in section 2.2 of this impact assessment. The following existing regulations will be under the scope of this power:

- the Railway (Licensing of Railway Undertakings) Regulations 2005
- the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016
- any tertiary legislation under these Regulations

The power includes the ability to make regulations or amend rail market legislation related to, but not limited to, the following areas:

- the authorisation of persons to operate train services;
- the operation of and access to railway infrastructure;
- the management of train services operators, infrastructure operators, and service providers;
- competition in the rail markets;

### 1.3 Previous amendments

The regulations that the power to amend will apply to are highly technical and complex, relating to the access and management of the railways. As the rail markets have developed, and the roles and responsibilities of the infrastructure manager and the regulator have evolved, it has been necessary to amend these regulations several times over the last thirty years. The 2016 Access and Management Regulations, in particular, have historically been subject to legislative change on a relatively frequent basis. New versions have been laid multiple times, including in 2005<sup>1</sup>, 2009<sup>2</sup>, 2015<sup>3</sup>, 2016<sup>4</sup>, and 2019<sup>5</sup> as a non-exhaustive list of examples. Each version either built on, amended, or revoked the previous set of regulations.

One example is through the implementation of an EU Directive from 2012, made in 2015. This Directive 2012/34/EU brought some additional services, provided by railway undertakings, into scope of the rules on access and charging. The Directive also made minor changes to the rules on access to service facilities, as well as rules that would apply if a service provider held a dominant position. The Directive also introduced rules on separation of accounts for any railway undertaking that would provide both passenger and freight services, with the ultimate goal of supporting competition in the sector.<sup>6</sup> The impacts of this example are summarised in section 2.3.

While the UK was a member of the EU, these changes could be done using powers to make secondary legislation to implement EU legislation. Following the UK's exit from the EU, even minor amendments to the regulations would need to be made using primary legislation, without an enduring power to amend.

Although the Retained EU Law Act 2023 contains time-limited powers to amend these regulations, the power to amend in the Rail Reform Bill will enable the Secretary of State to make changes to the regulations over medium and longer term. As the IRB is established and takes on duties as the infrastructure manager and the franchising authority, the regulations will need to continue to change as the management of the railway evolves. This will enable Government to deliver a more efficient, integrated railway, under the IRB.

### 1.4 Potential uses of the power

Section 1.2 outlines the scope of this power. As noted, the purpose of this power is to ensure that we can adjust legislation to combat issues that might arise as a result of:

- a) the establishment of an integrated rail body;
- b) any changes in policy objectives for the railway; and
- c) the introduction of applicable EU legislation.

As such, any example uses of this power are highly hypothetical; previous amendments to the AMRs or similar legislation are not entirely indicative of future amendments.

This power could be used to adjust existing legislation to match the introduction of legislation in the EU. For example, if the EU were to bring forward legislation that impacted the Channel Tunnel, this power would enable the UK to efficiently match that legislation and ensure that our domestic legislation allowed us to be compliant with any international agreements. A past example of such legislation is the amendment to the AMRs introduced in 2015, which ensured the Channel Tunnel was regulated correctly by authorities in both the UK and France.<sup>7</sup> Whilst there are existing powers in the Channel Tunnel Act 1987 that would

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<sup>1</sup> [The Railways Infrastructure \(Access and Management\) Regulations 2005 \(legislation.gov.uk\)](#)

<sup>2</sup> [The Railways Infrastructure \(Access and Management\) \(Amendment\) Regulations 2009 \(legislation.gov.uk\)](#)

<sup>3</sup> [The Railways Infrastructure \(Access and Management\) \(Amendment\) Regulations 2015 \(revoked\) \(legislation.gov.uk\)](#)

<sup>4</sup> [The Railways \(Access, Management and Licensing of Railway Undertakings\) Regulations 2016 \(legislation.gov.uk\)](#)

<sup>5</sup> [The Railways \(Access, Management and Licensing of Railway Undertakings\) \(Amendment\) Regulations 2019 \(legislation.gov.uk\)](#)

<sup>6</sup> [The Railways \(Access, Management and Licensing of Railway Undertakings\) Regulations 2016 \(legislation.gov.uk\)](#)

<sup>7</sup> [The Railways Infrastructure \(Access and Management\) \(Amendment\) Regulations 2015 \(revoked\) \(legislation.gov.uk\)](#)



allow us to make some amendments through secondary legislation, the proposed power would ensure there are no potential gaps relating to wider railways legislation.

Additionally, this power could be used if policy objectives were to change regarding environmental objectives or accessibility objectives. This power could be used to ensure existing legislation enables operators to meet objectives, instead of acting as a barrier, provided the changes are in scope of the power. This power could simplify processes to ensure that policies can be implemented in a more efficient manner.

The power itself is wide-ranging. The intent of this power is not to make drastic changes, nor is the intent to adversely impact competition or access. Any use of this power requires collective agreement, will go through the affirmative procedure and be preceded by a consultation, such that the sector would inform the policy objective, the approach, and the impacts, and Parliament would need to approve it.

## **1.5 Problem under consideration**

Rail markets legislation is a complex set of regulations that specify the rights and obligations for infrastructure managers, railway undertakings and service facilities and their interactions with a focus on access, charging and a certain level of independence.

As policy objectives for the rail markets evolves, the legislation will need to be adjusted. However, there is no long-term mechanism for the Government to make amendments, outside of primary legislation.

## **1.6 Rationale for Intervention**

It is essential that the Government is able to make necessary amendments to rail market regulations in an efficient manner, such as to the Access and Management Regulations.

Without this power, the Government would be required to repeatedly use primary legislation to amend rail markets legislation. Given the historic frequency with which amendments have been made, this option would create significant delays. Market or non-regulatory interventions are not applicable in this situation.

If amendments cannot be made in a timely manner, the Government will face significant issues in the transfer of functions and responsibilities to the IRB. This would prevent the implementation of rail reform and also prevent the IRB from being able to function effectively.

The reason for introducing the power at this stage is twofold. Firstly, the creation of the IRB will likely require further amendments to the regulations. Secondly, the Government currently has some time-limited powers that allow for amendments through secondary legislation, through the Retained EU Law Act 2023, which will expire in 2026. The proposed power ensures a long-term mechanism for making amendments. As such, this power will be required with or without the establishment of the IRB.

The Government recognises that any amendments to the Access and Management Regulations could have an impact on industry. To ensure adequate scrutiny, any proposals would be implemented through the affirmative procedure. This means that:

- a. Any proposed changes will be subject to public consultation, accompanied by a detailed assessment of the potential impacts, to ensure that the impact of any proposed simplifications are proportionate and clearly understood; and
- b. The statutory instrument would be subject to scrutiny and voted on by both Houses before it comes into force.

## **Policy objective**

Indicators of success of the proposals to introduce a delegated 'power to make and amend' rail markets legislation would be:

- The ability to introduce secondary legislation that explicitly takes into account the IRB's role (as an integrated infrastructure manager and franchising authority) and includes obligations, protections and controls tailored to the new structure.
- The scope to make amendments to the Access and Management and associated Regulations via secondary legislation, to deliver on Government policy.

- Enable continued compliance with international agreements to maintain cross-border passenger and freight services.

As of 2023, there is ongoing work to develop potential recommendations to simplify and improve industry processes including those set out in the Key Objectives, Research Questions and Evidence collection plans table at the end of this impact assessment. Recommendations from this work would be based on engagement with industry, including published exploratory papers. This power could, in future, provide a mechanism for the Secretary of State to implement chosen recommendations.

Any amendments made to the rail markets legislation using this power would be subject to debate in both Houses of Parliament. This would be supported by a separate impact assessment. The Secretary of State would expect to consult on any proposed amendments to the regulations prior to when the legislation is laid.

The power to amend gives long term certainty that rail markets legislation can be amended to both fit the IRB model and enable HMG to have the option to introduce new legislative frameworks for future projects and benefits to the railway.

## **Description of options considered**

**Option 0 – Do Nothing:** No delegated power to make or amend rail markets legislation in the Rail Reform Bill, and no option to use primary legislation. Non-legislative means, such as guidance, are used instead.

### **Option not suitable/discounted**

- Without a delegated power, there are few adequate enduring mechanisms and legislative opportunities to amend rail markets legislation. There would be no ability to introduce secondary legislation that explicitly addresses the IRB's role (as an integrated track and train rail body) and includes obligations, protections and controls tailored to the new structure.
- This would not give the scope to make amendments to the current Access and Management Regulations when necessary via secondary legislation, to deliver on Government policy.
- Additionally, without the use of primary legislation, non-legislative means would need to be used, such as an informal code of practice, or guidance. This approach will not meet the policy objectives, as non-legislative approaches would be unable to override the constraints of existing legislation.

## **Option 1 – Make changes through primary legislation**

### **Option not suitable/ discounted**

- This route would not give an enduring power to amend therefore would require the Government having to find a relevant primary legislative vehicle every time an amendment to existing rail markets legislation was necessary.
- It would mean using primary legislation to make technical changes to secondary legislation which is not the usual practice for this type of legislative amendment.

## **Option 2 – Include a power to amend rail markets legislation in the Rail Reform Bill. (Preferred Option)**

- There will be no mechanism to make or amend existing rail markets legislation outside of primary legislation.
- A power to amend will enable the Secretary of State to respond as necessary as processes evolve under the IRB.

## Summary and preferred option with description of implementation plan

Rail markets legislation are complex and need to be updated regularly, or risk being a barrier to efficient industry processes. Not updating the regulations as policy progresses could prevent the joining up of track and train under the IRB.

The preferred option is to include a power to amend rail markets legislation in the Rail Reform Bill, to ensure the Regulations can be kept up to date and reflect current policy. The secondary legislation made using the power to amend will be implemented following consultation with industry and accompanied by an impact assessment.

The exact timing for the secondary legislation is dependent on when amendments to rail markets legislation is required. The Secretary of State would expect to consult on any proposed amendments to the regulations prior to when the legislation is laid.

## 2.0 Costs and Benefits

### 2.1 Methodology

In accordance with Regulatory Policy Committee guidance regarding impact assessments supporting primary legislation, we consider the impacts of the whole policy, i.e. including the impacts of the policy itself and also any related secondary legislation.

We do not expect there to be any immediate impacts as a result of the creation of these powers, besides one-off familiarisation costs. Any costs and benefits that arise as a result of secondary legislation will be explored as and when these policies are developed, as part of a future impact assessment and consultation process that will accompany any future statutory instrument that is made under this proposed power.

This impact assessment presents only non-monetised impacts for the costs and benefits and wider economic impacts of this proposal, to demonstrate the scale of the proposal's impacts for the government. These impacts are not quantified as the full scope of any future amendments to the regulations will be dependent on future policy recommendations.<sup>8</sup> An impact assessment will be published alongside the secondary legislation to capture any monetised costs and benefits.

The Department has been engaging closely with industry including the Office of Road and Rail, the devolved authorities, other infrastructure managers, train operating companies, open access operators and the rail freight sector in advance of and during the legislation consultation. Officials have engaged with the rail freight industry throughout the reform process in order to ensure we understand the key protections for the rail freight industry.

### 2.2 Potential Scope of Changes

The power to amend will allow the introduction of secondary legislation under the affirmative procedure which has the potential to cover several topics, as noted below. The draft power includes the ability to amend rail markets legislation that cover the following areas:

- the authorisation of persons to operate train services, including the prevention of a person from operating train services, unless authorised;
- the operation of, and access to, railway infrastructure, including conditions on which access is made available;
- the management of train services operators, infrastructure operators, and service providers, including provisions for management and independence;
- competition in rail markets;
- arrangements for imposing charges for access to infrastructure and services;

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<sup>8</sup> The exception to this is the indicative familiarisation costs which have been quantified, for illustrative purposes, in section 2.4 to provide a sense of scale.

- schemes regarding payments between infrastructure operators, service providers, and train service operators;
- information sharing, and restricting the disclosure of information;
- enforcement provisions.

### 2.3 Businesses affected & direct costs faced by them

The specific risks and impacts to specific businesses will be considered in detail in the impact assessments accompanying secondary legislation derived from this power. Given the uncertainty over the specifics of future policies, we have been unable to assess them at this early stage but have provided a summary of the possible kind of impacts in the table below:

**Table 11:**

<b>Group</b>	<b>Costs</b>	<b>Benefits</b>
Existing and potential contracted Train Operating Companies	<ul style="list-style-type: none"> <li>- Familiarisation costs to industry associated with adjusting to new regulations. (direct)</li> <li>- Administrative costs of producing certain required information (direct)</li> <li>- Potential for ongoing operational costs and/or impacts on revenue. Dependent on future policy.</li> </ul>	<ul style="list-style-type: none"> <li>- Benefits may include clearer information on network use, improved operational planning, and legal simplifications for stations and depots (direct)</li> <li>- Potential for reduction in operational costs and/or an increase in revenue in line, for example, with possible simplifications for industry. Dependent on future policy.</li> </ul>
Existing and potential Freight Operating Companies	<ul style="list-style-type: none"> <li>- Familiarisation costs to industry associated with adjusting to new regulations (direct)</li> <li>- Administrative costs of producing certain required information (direct)</li> <li>- Potential for ongoing operational costs and/or impacts on revenue. Dependent on future policy.</li> </ul>	<ul style="list-style-type: none"> <li>- Benefits may include clearer information on network use, improved operational planning, legal simplifications for stations and depots (direct), and a more stable investment environment (indirect)</li> <li>- Potential for reduction in operational costs and/or an increase in revenue in line, for example, with possible simplifications for industry. Dependent on future policy.</li> </ul>
Infrastructure Managers	<ul style="list-style-type: none"> <li>- Familiarisation costs to industry associated with adjusting to new regulations (direct)</li> <li>- Administrative costs of producing certain required information (direct)</li> <li>- Potential for ongoing operational costs and/or impacts on revenue. Dependent on future policy.</li> </ul>	<ul style="list-style-type: none"> <li>- Benefits may include improved operational planning, legal simplifications for stations and depots (direct), and a more stable investment environment (indirect)</li> <li>- Potential for reduction in operational costs and/or an increase in revenue in line, for example, with possible simplifications for industry. Dependent on future policy.</li> </ul>
Existing and potential Open Access Operators	<ul style="list-style-type: none"> <li>- Familiarisation costs to industry associated with adjusting to new regulations (direct)</li> </ul>	<ul style="list-style-type: none"> <li>- Benefits may include clearer information on network use, improved operational planning, and legal simplifications for stations and depots (direct)</li> </ul>

	<ul style="list-style-type: none"> <li>- Administrative costs of producing certain required information (direct)</li> <li>- Potential for ongoing operational costs and/or impacts on revenue. Dependent on future policy.</li> </ul>	- Potential for reduction in operational costs and/or an increase in revenue in line, for example, with possible simplifications for industry. Dependent on future policy.
Rail passengers	None	- Benefits may include clearer advance information, better passenger experiences, and other benefits such as those following from better railway operations on level and reliability of services (direct)
Unions	N/A	N/A
Devolved rail authorities	N/A	N/A

### Costs and benefits to businesses of previous amendments:

As above, in section 1.3, one example of a previous amendment was through the implementation of a EU Directive from 2012 made in 2015. This Directive 2012/34/EU brought some additional services into scope of the rules and made minor changes to the rules on access to service facilities as well as rules that would apply if a service provider would hold a dominant position. The Directive also introduced rules on separation of accounts for any railway undertaking that would provide both passenger and freight services, with the ultimate goal of supporting competition in the sector.<sup>9</sup>

The impact assessment accompanying this amendment, 'The Railways Infrastructure (Access and Management) and (Licensing of Undertakings) Regulations 2015', did not monetise any of the options for intervention due to limitations in the available evidence base.<sup>10</sup> The main impacts included:

- changes in access to railway service provisions;
- additional rules for railway service operators where one body is dominant;
- and the requirement to separate accounts when a company provides both passenger and freight services.

Where an organisation was required to comply with new provisions in the regulations, the assessment found that they were likely to incur varying administrative costs and low familiarisation costs due to the level of legislative change. Although benefits were minimal, there were provisions which were expected to result in an increase in revenue for organisations in scope. The assessment also found that amendments would not result in any significant ongoing operational costs. For example, the changes in access to service provision were expected to result in a greater utilisation of service facilities and an increase in revenue for operators.

A summarised example of an impact in the Regulations 2015 impact assessment is included in the box below:<sup>11</sup>

<b>Information in network statements (Article 27)</b>
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<sup>9</sup> [The Railways \(Access, Management and Licensing of Railway Undertakings\) Regulations 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2016/01/5140160000000001.pdf)

<sup>10</sup> [The Railways \(Access, Management and Licensing of Railway Undertakings\) Regulations 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2016/01/5140160000000001.pdf)

<sup>11</sup> This example paraphrases an identified impact on page 20 of The Railways Infrastructure (Access and Management) and (Licensing of Undertakings) Regulations 2015. This was chosen as an example as it presents a useful sense of scale of a monetised impact on businesses. See: [The Railways \(Access, Management and Licensing of Railway Undertakings\) Regulations 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2016/01/5140160000000001.pdf)

Infrastructure managers are required to make their Network Statement available through an online portal set up by EU infrastructure managers and for the statement to include additional elements, for example, requiring the statement to be published in at least two EU Member State languages.

### **Costs and benefits**

The requirement to translate network statements would result in HS1 and Network Rail incurring transitional and recurring policy costs.

The IA estimates that the one-off cost of translating both network statements into another EU Member State language were likely to cost under £20,000 with a likely review each year assumed to cost around £10,000 total for all documents.

The IA also notes that benefits could arise because of the availability of network statement in another language, such as increased competition on the network or increased utilisation of the network because of greater awareness of the services offered. However, given the widespread use of English in Western Europe as a business language the resulting benefits were assumed to be negligible.

Overall, the assessment found minimal costs and benefits due to amendments being mostly minor, technical changes to the legislation.

The amendments covered by this impact assessment are an example of an update to railway markets legislation. Therefore, the proposal is expected to cover changes of this nature (i.e. technical changes). However, the proposed power, under Option 2, is not limited to this.<sup>12</sup>

## **2.4 Costs and benefits**

**Option 0 – Do Nothing:** No delegated power to make or amend rail markets rules in the Rail Reform Bill and no use of primary legislation. Non-legislative means to be used instead.

This is the counterfactual in this impact assessment against which the other options have been assessed.

### **Option 1 – Do Something: Make changes through primary legislation**

As specific amendments required to rail market legislation are not yet known, it is not possible to quantify specific costs or benefits for this option. Broadly, the simplification of processes through any future policy changes has the potential to reduce costs to industry and government, but it is not possible to accurately describe the specifics of this at this point.

#### **Costs:**

- Familiarisation costs to industry associated with adjusting to new regulations are possible, but as specific amendments necessary are not currently known it is currently not possible to quantify costs accurately.
- Additionally, there are potential administrative costs to government in terms of repeatedly requiring primary legislation.

#### **Benefits:**

- Simplifications for industry from proposed changes in Access and Management Regulations are likely to bring some benefits to businesses, though as specific amendments necessary are not currently known it is currently not possible to quantify benefits accurately. These will be subject to a separate impact assessment.

**Option 2 – Do Something – Include a power to make and amend railway markets legislation in the Rail Reform Bill.**

#### **Costs:**

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<sup>12</sup> To note, the content of the Regulations 2015 IA is not wholly reflective of the nature of amendments that may be necessary to meet the policy objectives. The power itself is wide-ranging and could potentially be used to restructure the market. However, due to the inherent uncertain nature of future regulatory interventions we are not able to provide further detail at this stage.

- It is expected that industry will be required to familiarise themselves with changes to primary legislation and any secondary legislation derived from this power. One-off familiarisation costs relate to time spent understanding and adjusting to regulatory change, however, as specific amendments are not currently known it is not possible to estimate familiarisation costs given uncertainty surrounding the number of businesses affected or the amount of time it would take for businesses to familiarise themselves with future changes.
- For illustrative purposes, we have used high-level assumptions to provide an indicative estimate of familiarisation costs to businesses. Here, it is assumed that a chief executive or senior official, a finance manager and a legal professional would form the management team familiarising themselves with changes to legislation.<sup>13</sup> Estimates of median hourly wages for relevant occupations, taken from the Annual Survey of Hours and Earnings 2022, have been uprated by 17.9% to take account of non-wage labour costs.<sup>14</sup> The table below summarises the hourly labour costs that have been used to estimate the cost per organisation.<sup>15</sup>

**Table 12: Hourly median wages and labour costs for business management team occupations**

<b>Job role</b>	<b>Median hourly wage (excl. overtime)</b>	<b>Median hourly labour costs (incl. non-wage costs)</b>
Chief executives and Senior Officials	£37.43	£44.14
Financial manager	£31.96	£37.69
Legal Professionals	£23.27	£27.44
<b>Total</b>	<b>£92.66</b>	<b>£109.28</b>

- Wider familiarisation costs are estimated using hourly labour costs, the number of hours of familiarisation and the number of businesses affected. By assuming that 46 organisations will need to become familiar with relevant legislative changes and that each individual will require 8 hours to familiarise themselves with any changes, the estimated cost incurred across all organisations is around £40,000.<sup>16,17</sup> This figure is intended to give a sense of scale of familiarisation costs rather than act as an estimate of total familiarisation costs from this proposal. It is possible that this is an overestimate of the costs that might be incurred at this stage; any further costs resulting from secondary legislation will be considered as part of future impact assessments.
- Precedent for this approach exists in impact assessments accompanying similar proposals. For example, the impact assessment for new legislative powers for ultra-low emission vehicles in primary legislation, did not monetise familiarisation costs at this stage due to uncertainty surrounding future requirements.<sup>18</sup>

<sup>13</sup> Management team occupations are indicative and will depend on the nature of the regulatory change.

<sup>14</sup> Estimated from latest ONS Index of Labour Costs per Hour publication.

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/indexoflabourcostsperhourilch/julytoseptember2020> Here, the non-wage labour cost uplift uses 2019 Q4 to 2020 Q3 figures (seasonally adjusted). To estimate the uplift, non-wage costs per hour as a proportion of total labour costs (15%) are divided by wage costs per hour as a proportion of total labour costs (85%) (i.e.  $0.152/0.848=0.179$ ). Therefore, we have uplifted wages by 17.9% to get an estimate of total labour costs.

<sup>15</sup> ONS (2022). Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14.6a Hourly pay – Excluding overtime (£) – For all employee jobs: United Kingdom, 2022. Chief executives and senior officials (SOC:111), Financial managers and directors (SOC:1131), Legal professionals (SOC:241). See: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupati on4digitsoc2010ashtable14>

<sup>16</sup> Number of licensed RDG members (i.e.) is used as a proxy measurement for the number of businesses that may be in scope. This includes train operating companies, freight operating companies, track and infrastructure companies, and owning groups. See: <https://www.raildeliverygroup.com/about-us/passenger-freight-track/licensed-associate-members.html>

<sup>17</sup> This figure is derived by taking total labour costs (£109.27) and multiplying this by 8 hours, across 46 organisations ( $£109.27 \times 8 \times 46 = £40,210.94$ ).

<sup>18</sup> The impact assessment states that this cost would be considered for each individual regulation and requirement generated using the powers taken in primary legislation. DfT (2016). New legislation powers for ULEV

### ***Benefits (arising from the power, created in primary legislation):***

- The government would have the ability make or amend key rail market legislation, where appropriate within workable timescales, giving time to engage to industry and for industry to prepare for potential amendments. This gives the government a clear and proportionate route to building a regulatory regime that is fit for purpose.

### ***Benefits (arising from use of the power, via secondary legislation):***

- As with the benefits for option 1, simplifications for industry from proposed changes in the Access and Management Regulations are likely to bring some benefits to businesses, though as specific amendments necessary are not currently known it is currently not possible to quantify benefits accurately. These will be subject to a separate impact assessment.

## **2.5 Consultation**

As part of the Plan for Rail consultation on legislation to implement rail reform, consultees were asked:

- *‘Noting we will consult separately on the use of the power to amend the existing Access and Management Regulations, are you aware of any immediate essential changes that are needed to these Regulations to enable Great British Railways to deliver its guiding mind function?’*,

The consultation itself did not discuss the specifics of the scope of the proposed delegated power, due to the commitment to consult on the power to amend the existing Access and Management Regulations separately. Relevant stakeholders will be consulted on proposed amendments made under the power as the policy progresses and potential secondary legislation is identified. Several industry stakeholders discussed the ‘power to amend’ in their returns.

No immediate necessary amendments were identified by respondents, though this was anticipated given the highly technical and complex nature of these regulations. Alongside the formal written consultation, we undertook detailed discussions with industry and legal experts and held several roundtables and webinar events across the industry, prior to and during the consultation period, including with the rail freight industry, to test our thinking, explore options and the potential effect of any amendments.

The rail freight industry in particular have raised some questions about the power, including concerns that the power might be used in the future to remove existing protections and rights to access the network while others thought there was a risk that the role of the Office of Rail and Road in ensuring fair access and non-discriminatory behaviour would be reduced.

Other respondents noted the power to amend is sensible, recognising that there are opportunities to remove bureaucracy and simplify processes. Some welcomed the commitment that any amendments to the Access and Management Regulations recommended by the commission would only happen after consultation and analysis of implications.

Some respondents highlighted that it is important to the rail industry that any changes made by the power would need to be subject to affirmative procedure, meaning that any legislative amendments to the regulations would have to be debated in both parliamentary houses.

In the draft government response to the consultation, we note the concerns and give reassurances that the intention is for the principal requirements in the AMRs (which ensure fairness and non-discrimination in capacity allocation for freight and passenger operators) to remain as they are. The role of the ORR as independent regulator will also remain in terms of access appeals and approving and directing access to the network.

## **3.0 Risks and assumptions**

The specific risks and impacts will be considered in detail in the impact assessments accompanying secondary legislation derived from this power. Given the uncertainty over the specifics of future policies, we have been unable to assess them at this early stage. Whilst specific risks and assumptions cannot be



identified, we acknowledge the importance of working with industry to ensure that any legislative amendments identified as under this power are subject to full industry engagement and consultation.

## 4.0 Wider impacts

Wider impacts and benefits will be dependent on the specific secondary legislation that is introduced under the power at a future date. This will be subject to the outcomes of future policy development. Potential impacts from this would be considered as part of future impact assessments produced alongside future statutory instruments.

### Competition

As detailed in section 1.2, the draft power includes the ability to amend rail markets legislation that also covers competition in the rail markets.

There will be no immediate impacts on competition as a result of the creation of these powers. Any impact on competition as a result of secondary legislation will be assessed when these policies are developed, as part of a future impact assessment and consultation process that will accompany any future statutory instrument that is made under this proposed power.

There is the potential that future regulatory changes could have an effect on operators, market participants and supply chains, and users of the rail network, and change the nature of competition in different relevant markets. For example, wider impacts that arise from greater efficiencies (e.g. improved service quality and innovation) could improve competition in the rail markets and subsequently improves the efficiency of rail delivery.

It is not expected or intended that this proposal would result in any adverse impacts on competition; any such impacts will be identified and assessed as part of the impact assessment required of secondary legislation. As noted, this secondary legislation requires collective agreement and is subject to an affirmative procedure.

## 4.1 Impact on small, micro and medium businesses

Full small, micro and medium businesses assessments will be undertaken as part of any impact assessment accompanying secondary legislation derived from this power. At this stage, due to uncertainty surrounding the detail of future policy, we are unable to assess specific impacts to small, micro and medium businesses.<sup>19</sup> This section provides an indication of the size of businesses that may be in scope of future regulatory change and considers the proportionality of impacts.

Although it is not possible, at this stage, to determine the specific impacts resulting from future secondary legislation, we expect that costs to businesses would likely include (but may not be limited to) the cost of familiarising themselves with regulatory changes and complying with new administrative requirements (e.g. the provision of additional information).<sup>20</sup> These costs have the potential to place a proportionately larger burden on micro, small and medium businesses affected by the proposal as smaller businesses may be required to devote a greater proportion of their resources to familiarising themselves with relevant secondary legislation or addressing any additional administrative requirements.

To provide an indication of the size of businesses that may be in scope of future secondary legislation derived from this power, the tables below set out the number of businesses by size in the passenger rail transport (interurban), freight rail transport, and more broadly the transportation and storage sector as based on 2022 business population estimates.<sup>21</sup>

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<sup>19</sup> The threshold for small and micro businesses is 0-49 employees and for medium businesses it is 50-499 employees. See: [Medium sized business regulatory exemption assessment: supplementary guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/medium-sized-business-regulatory-exemption-assessment-supplementary-guidance)

<sup>20</sup> This is not a conclusive list of costs resulting from future secondary legislation derived from this power.

<sup>21</sup> Office for National Statistics (ONS): UK Standard Industrial Classification (SIC) Hierarchy. [https://onsdigital.github.io/dp-classification-tools/standard-industrial-classification/ONS\\_SIC\\_hierarchy\\_view.html](https://onsdigital.github.io/dp-classification-tools/standard-industrial-classification/ONS_SIC_hierarchy_view.html)

**Table 13: Business population estimates for passenger rail transport (interurban), 2022<sup>22,23</sup>**

Business size	Number of businesses	Proportion of businesses
1-9 employees	10	25%
10-49 employees	5	12.5%
50-249 employees	5	12.5%
250+ employees	20	50%

Within passenger rail transport (interurban), there is a relatively high proportion of larger employees, however, there are some businesses that are classified as micro, small or medium businesses.

**Table 14: Business population estimates for freight rail transport, 2022<sup>24,25</sup>**

Business size	Number of businesses	Proportion of businesses
1-9 employees	35	87.5%
10-49 employees	0	0%
50-249 employees	0	0%
250+ employees	5	12.5%

Within freight rail transport, a large proportion of businesses would be classified as small and micro businesses.

**Table 15: Business population estimates for employers in transportation and storage, 2022<sup>26</sup>**

Business size	Number of employers	Proportion of employers
All employers	51,685	100%
1-9 employees	41,465	80%
10-49 employees	8,280	16%
50-249 employees	1,560	3%
250+ employees	380	1%

The business population estimates, in the above tables, indicate that small, micro and medium businesses will likely be in scope of a proposal affecting these sectors. However, the reforms to rail market legislation are expected to primarily be operational and impact on large private sector companies operating on the rail network (i.e. train operating companies (TOCs) and freight operating companies (FOCs)).<sup>27</sup>

The table below shows the size of franchised TOCs operating in the market, by number of employees. Here, the average operator has several thousand employees and would be classified as a large business (i.e. with over 500 employees), only one TOC has below the 499 employee threshold and would therefore need to be considered in any impact assessments accompanying future secondary legislation. Evidence on the size, by number of employees, of freight operators is less readily available. However, where there

<sup>22</sup> Business Population Estimates for the UK and Regions 2022. Table 7 – UK Groups. Passenger Rail Transport, Interurban. <https://www.gov.uk/government/statistics/business-population-estimates-2022>

<sup>23</sup> Passenger rail transport, interurban is defined by ONS as: rail transportation of passengers using railway rolling stock on mainline networks, spread over an extensive geographic area; passenger transport by interurban railways; operation of sleeping cars or dining cars as an integrated operation of railway companies. Office for National Statistics (ONS): UK Standard Industrial Classification (SIC) Hierarchy. [https://onsdigital.github.io/dp-classification-tools/standard-industrial-classification/ONS\\_SIC\\_hierarchy\\_view.html](https://onsdigital.github.io/dp-classification-tools/standard-industrial-classification/ONS_SIC_hierarchy_view.html)

<sup>24</sup> Business Population Estimates for the UK and Regions 2022. Table 7 – UK Groups. Freight rail transport. <https://www.gov.uk/government/statistics/business-population-estimates-2022>

<sup>25</sup> Freight rail transport is defined by ONS as: freight transport on mainline rail networks as well as short line freight railways. Office for National Statistics (ONS): UK Standard Industrial Classification (SIC) Hierarchy. [https://onsdigital.github.io/dp-classification-tools/standard-industrial-classification/ONS\\_SIC\\_hierarchy\\_view.html](https://onsdigital.github.io/dp-classification-tools/standard-industrial-classification/ONS_SIC_hierarchy_view.html)

<sup>26</sup> Business Population Estimates for the UK and Regions 2022. Table 5 – Number of businesses in the private sector and their associated employment and turnover, by number of employees and industry sector, UK, start 2022. Transportation and Storage. <https://www.gov.uk/government/statistics/business-population-estimates-2022>

<sup>27</sup> Further evidence would be provided to support this assumption in impact assessment accompany secondary legislation (derived from this power) on the basis that there the detail of regulatory impacts would be better understood.

is available data it indicates that freight operating companies are large businesses. For example, GB Railfreight and DB Cargo UK report that they employ around 1,100 and 2,200 people, respectively.<sup>28,29</sup>

**Table 16: Number of TOC employees<sup>30</sup>**

Train operating company	Number of Full Time Equivalent Employees
Govia Thameslink Railway	7,245
Northern Trains	6,912
Great Western Railway	6,185
South Western Railway	5,217
ScotRail	4,968
Southeastern	4,481
Avanti West Coast	3,297
London North Eastern Railway	3,240
TfW Rail	2,993
West Midlands Trains	2,948
Greater Anglia	2,792
East Midlands Railway	2,410
CrossCountry	1,854
TransPennine Express	1,602
London Overground	1,505
Elizabeth line	1,277
Merseyrail	1,225
Chiltern Railways	866
c2c	639
Caledonian Sleeper	198

To note, open access operators generally have significantly fewer employees than franchised TOCs. The operators in the table below would be classified as medium businesses and therefore, if in scope and affected, would need to be considered in small, micro and medium business assessments in impact assessments accompanying future secondary legislation.<sup>31</sup>

**Table 17: Number of TOC employees (open access)<sup>32</sup>**

Train operating company (open access)	Number of Full Time Equivalent Employees
Heathrow Express <sup>33</sup>	169
Grand Central	142
Hull Trains	104
Lumo	100

<sup>28</sup> GB Railfreight website. See: <https://www.gbrailfreight.com/people/> [Accessed 26/10/2023].

<sup>29</sup> DB Cargo UK website. See: <https://uk.dbcargo.com/rail-uk-en/Our-Company/facts-and-figures> [Accessed 26/10/2023].

<sup>30</sup> ORR (2023). Table 2233 - Full-time equivalent (FTE) employees by operator, as of March 2023. See: <https://dataportal.orr.gov.uk/statistics/compendia/toc-key-statistics/>

<sup>31</sup> The impact assessment associated with the Railway (Licensing of Railway Undertakings) Regulations 2005 found that small and micro businesses were in scope of the proposal, however, did not raise open access operators being in scope as a point of consideration. See: [EXPLANATORY MEMORANDUM TO THE THE RAILWAY \(LICENSING OF RAILWAY UNDERTAKINGS\) REGULATIONS 2005 NO.3050 \(legislation.gov.uk\)](#)

<sup>32</sup> ORR (2023). Table 2233 - Full-time equivalent (FTE) employees by operator, as of March 2022. See: <https://dataportal.orr.gov.uk/statistics/compendia/toc-key-statistics/>

<sup>33</sup> Heathrow Express operates services on an open access basis but on the basis of a bespoke access and contractual regime agreed pre-privatisation, which is quite distinct from other operators on the network.

To conclude, the impacts of primary and accompanying future secondary legislation may impact small, micro, and medium businesses. However, it is not possible to exempt these businesses from this proposal without affecting the ability to achieve the policy objectives. In line with guidance, and where possible, impacts on small, micro and medium businesses will be mitigated through design of future regulatory change.

## 4.2 A summary of the potential trade implications of measure

There are no expected implications for trade as the scope of the ‘power to amend’ only applies to domestic rail legislation.

Following the UK’s exit from the EU, rail legislation is entirely domestic. However, much of our existing rail legislation has been influenced by EU policy, as members of the EU were required to implement any EU rules. Due to the complicated nature of the legislation, it is difficult to separate out which areas of the legislation are entirely based on EU policy and which are entirely domestic. The rules on licensing for railway undertakings have EU origin, in the Regulations 2005. For any licenses outside of this scope, including licenses for infrastructure managers, depots and stations, the legislation is domestic for GB and found in the Railways Act 1993. Rules on capacity allocation, timetabling, track access agreements and charges are EU rules implemented in the Regulations 2016. These regulations also have rules on certain levels of separation between infrastructure managers, railway undertakings, and service providers regarding funds, ownership and decision-making, as well as the role of the ORR as the market regulator and appeals body. The GB domestic Railways Act 1993 contains the general duties of the ORR as well as a role for the ORR in relation to the access agreements between the facility owners of a rail network, station or depot and railway undertakings.

While we are no longer required to implement EU rules, the power to amend will give us the ability to update domestic legislation in line with wider international policy changes, if required. This will enable us to maintain compliance with international agreements, including those related to passenger and freight services through the Channel Tunnel.

## 5.0 Monitoring and Evaluation

Detailed post-implementation reviews (PIRs) will be developed and set out in impact assessments that will accompany proposed statutory instruments that will be made under this delegated power. Primary legislation will be evaluated following the full establishment of the IRB which should allow secondary rail market legislation to be implemented without recourse to primary legislation.

The PIR will seek to establish whether, and to what extent, this proposal has achieved the objectives set out in section 1.6, has had any unintended effects, or can be improved. Points that will likely be considered within the review include are whether the proposal has:

- Removed barriers to rail reform;
- Maintained compliance with international agreements;
- Enabled the Government to support further reforms to the railway, by ensuring amendments can be made in a timely manner.

In terms of separate evaluation, DfT is developing a structured benefits management approach to measure, monitor and report on the progress of rail reform. Further work to scope additional evaluation activity, involving an evaluation scoping study to assess data requirements and explore impact evaluation methods, is ongoing. Evaluation of the reforms is likely to draw on a range of data sources, such as passenger surveys and internal monitoring data, as well as bespoke data collection.

### Review status:

<input type="checkbox"/>	Sunset clause	<input type="checkbox"/>	Other review clause	<input type="checkbox"/>	Political commitment	<input checked="" type="checkbox"/>	X	<input type="checkbox"/>	Other reason	<input type="checkbox"/>	No plan to review
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Primary legislation to be reviewed in parallel with secondary legislation, as it is developed. Secondary legislation will be accompanied by full impact assessments and PIR plans specific to each policy.

**Expected review date:**

0	1
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3	0
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Five years following designation of the IRB via secondary legislation.<sup>34</sup> The timing will be reviewed depending on when the regulatory changes are implemented.

**Rationale for PIR approach:**

Full PIR plans will be laid out alongside secondary legislation, relevant to specific policy areas. The following gives an indication of what those plans will look like.

**Will the level of evidence and resourcing be low, medium or high? (See Guidance for Conducting PIRs)**

Subject to more detail in secondary legislation PIRs, evidence and resourcing for evaluation is expected to be medium.

Primary legislation removes legislative constraints to make or amend rail markets law in secondary legislation and can be evaluated following the full establishment of the IRB. This should allow secondary rail market legislation to be implemented without recourse to primary legislation.

Secondary legislation will require more bespoke analysis and may require additional resource across HMG, including drawing on views from stakeholders. The latter part will be likely to require a high level of resource given many reforms are to operational processes and a full evaluation will require surveying and interviewing those involved in the specific processes.

**What forms of monitoring data will be collected?**

In relation to secondary legislation, operational and performance data for freight and passenger services can be collected where relevant. This includes data on costs and analysis of cost efficiencies, capacity and capacity utilisation, timetabling and performance, passenger satisfaction and other end user data regularly collected by industry.

Data may be collected on financial implications for freight and passenger service operators, station and depot management, and whole sector finances where relevant to a specific policy area in secondary legislation.

Attention will be paid to how codes of practice evolve over time. Initial reviews will focus on the secondary legislation itself, with subsequent reviews narrowing in on how practices and behaviours have changed resulting from the reforms as reflected in codes of practice and workplace guidance.

**What evaluation approaches will be used? (e.g. impact, process, economic)**

Evaluation will draw on both impact and process approaches. The process evaluation will assess the role of primary legislation enabling amendments to rail markets legislation.

Impact evaluations will be laid out in more detail in the secondary legislation PIRs and will be more targeted to the objectives of specific policy areas.

For secondary legislation and in the context of the wider IRB programme, economic i.e., value for money, evaluations will be conducted, and this will feedback into the evaluation plan for the power to amend framework.

**How will stakeholder views be collected? (e.g. feedback mechanisms, consultations, research)**

Different groups involved in the various areas of reform will be consulted as to the effectiveness of the reforms and any improvements to operational processes they are involved in. This may involve a mixed

<sup>34</sup> This could take place in 2025, however, the timing is uncertain.

method data collection, through formal and informal approaches, including periodic survey of operators and network operators.

**Key Objectives, Research Questions and Evidence collection plans**

<b>Key objectives of the regulation(s)</b>	<b>Key research questions to measure success of objective</b>	<b>Existing evidence/data</b>	<b>Any plans to collect primary data to answer questions?</b>
Improved planning and management relating to use of the Railway	Are industry processes operating in a more coordinated and joined up manner?  Do investors and railway operators have more certainty for planning?	Industry codes of practice or guidance for working practices; dispute resolution reports; strategic planning documents	To assess the effectiveness of processes following reform, consultation of key industry bodies will be required e.g., ORR, franchise and open access operators, infrastructure managers
Improved performance and operations of the Railway	Has the IRB improved day-to-day operational delivery in the areas of delay attributions, perturbed operations, and operational planning?	Delay attribution process reports; contractual incentive regimes; delays and incidents data	
Simpler framework around stations and depots	Has the simplified framework for stations and depots encouraged third party investment?	Comparative contractual frameworks for Station Facility Owner (SFO)/Depot Facility Owner (DFO)s in passenger service contracts	

<b>Title:</b> Primary power to implement the Luxembourg Rail Protocol  <b>RPC Reference No:</b> RPC-DfT-5300(1) <b>Lead department or agency:</b> Department for Transport	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> January 2024			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> International			
	<b>Type of measure:</b> Primary Legislation			
<b>Contact for enquiries:</b> railreform.bill@dft.gov.uk				
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> Green	
<b>Cost of Preferred (or more likely) Option (in 2019 prices)</b>				
<b>Total Net Present Social Value</b>  NQ	<b>Business Net Present Value</b>  NQ	<b>Net cost to business per year</b>  NQ	<b>Business Impact Target Status</b> Qualifying Provision	
<b>What is the problem under consideration? Why is Government intervention necessary?</b> <p>The UK does not currently have the legislative primary power to implement the terms of the Luxembourg Rail Protocol ('the Protocol'). The Protocol is a new opportunity for the UK to support and boost private sector financing opportunities in the UK's railway rolling stock market, as well as increase opportunities for UK businesses – for example, lenders or lessors – to participate in overseas financing activities with lower risk, and therefore cost. Without the legislation, creditors financing rolling stock continue to be exposed to risk in the event of default or insolvency when rolling stock has crossed a border and is located in another territory – the Protocol aims to address this risk. New powers are needed to implement the Protocol by making the necessary changes to domestic UK legislation to comply with the terms of the Protocol.</p>				
<b>What are the policy objectives and the intended effects?</b> <p>At this stage, to provide a new power in the upcoming Rail Reform Bill which will allow the Secretary of State for Transport to make regulations in the future which will allow for the full implementation of the Protocol via the Constitutional Reform and Governance Act 2010 (CRAG), subject to a further consultation and impact assessment. The Protocol will support increased private sector financing opportunities in the UK's railway rolling stock market, as well as increase opportunities for UK businesses to participate in overseas financing activities.</p>				
<b>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</b> <p>Three options have been considered. Option 1 would provide the Government with the primary power to create and amend secondary legislation in order to properly implement the Cape Town Convention (as it relates to rail rolling stock) and the Luxembourg Rail Protocol which will then allow the UK to ratify the Protocol. Option 2 would be for the Government to seek other legislative opportunities to implement the Protocol, outside of the Rail Reform Bill. The third option is to do nothing and to maintain the status quo. However, it is worth noting that the UK made a commitment to implement the Protocol by signing up to it in 2016. If we do nothing, there is a risk that the UK, reputationally, is seen as unreliable and not prepared to fulfil its international obligations if the implementation of the Protocol is further delayed. Additionally other countries are implementing the Protocol and we will potentially be disadvantaged in relation to the financing offers available in those countries both for domestic rolling stock and export financing opportunities.</p>				
<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> The review date will be 5 years after the policy comes into force.				
Is this measure likely to impact on international trade and investment?			Yes	
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

***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 by the responsible Minister:

  
\_\_\_\_\_

Date:

20/02/2024  
\_\_\_\_\_



# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Primary power to implement the Cape Town Convention and Luxembourg Rail Protocol (as they relate to rail rolling stock) through secondary legislation.

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ
COSTS (£m)	Total Transition (Constant Price)      Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	NQ		NQ	NQ	
High	NQ		NQ	NQ	
Best Estimate	NQ		NQ	NQ	
<b>Description and scale of key monetised costs by ‘main affected groups’</b>					
This impact assessment does not include any monetised costs as quantification would rely on inherently uncertain and hypothetical scenarios of future regulatory interventions. Currently, the Luxembourg Rail Protocol is not in force and so the monetised costs are not clear. Government has committed to run a consultation and further impact assessment prior to implementation of subsequent secondary legislation. If the Protocol has come into force at this time (which is expected by early 2024 at the latest now four signatory states have ratified), and the finalised costs of utilising the benefits of the Protocol (e.g. costs of registering assets on the international registry) are available from the Supervisory Authority which will oversee the international registry, these will be used to inform the subsequent impact assessment.					
<b>Other key non-monetised costs by ‘main affected groups’</b>					
This impact assessment discusses some of the potential impacts of the ways these powers could be used in future. Notwithstanding this, broadly the main non-monetised costs for businesses of the Protocol when fully enacted relate to transition costs including familiarisation processes and initial registration of existing rolling stock, and ongoing costs of registering interests, registering plates and affixing these to rolling stock. For example, one familiarisation cost could include businesses needing to review existing financing contracts – therefore requiring specialist advice – to take account of the terms provided by the Protocol. It is important to note that ongoing costs to business will be borne on a voluntary basis, as these are subject to businesses choosing to use the international registry. Currently, the Luxembourg Rail Protocol is not in force globally (it is expected to be early 2024 at the latest) and so all the potential costs are not clear.					
BENEFITS (£m)	Total Transition (Constant Price)      Years		Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)	
Low	NQ		NQ	NQ	
High	NQ		NQ	NQ	
Best Estimate	NQ		NQ	NQ	
<b>Description and scale of key monetised benefits by ‘main affected groups’</b>					
The new power, on its own, will not have any impact. Therefore, this impact assessment does not include any monetised benefits as quantification would rely on inherently uncertain and hypothetical scenarios of future regulatory interventions. Subject to subsequent consultation and further impact assessment (which Government has committed to), the general expected benefit is greater opportunities for inward investment and exports for the UK rail and finance industries due to reduced costs in financing and greater security for creditors on their investment in rail rolling stock.					

**Other key non-monetised benefits by 'main affected groups'**

The scale of non-monetised benefits of the proposed policy is not fully known, due to the uncertain nature of future regulatory interventions. General expected benefits are greater opportunities for UK businesses to participate in overseas financing initiatives for railway rolling stock (an industry with global revenue worth USD\$54bn in 2022)<sup>1</sup> and cheaper financing for domestic rolling stock. This could unlock greater levels of private sector investment, in the UK's rolling stock market, with better financing terms for lessees and potentially lower costs – and these cost savings could be passed on to operators, as well as their customers. It could also provide new opportunities for UK businesses wishing to participate in investment activities overseas due to reduced barriers and greater security for creditors on their investment in rail rolling stock.

**Key assumptions/sensitivities/risks****Discount rate**

N/A

Government has committed to consultation and further impact assessment prior to implementation of secondary legislation, which will examine the specific risks and impacts of the policy. Given the current uncertainty over these specifics – we expect further details on the operation of the international registry and the role of the Supervisory Authority to be published later in 2023 or early 2024 - we have been unable to assess them at this early stage.

Another area of uncertainty concerns potential uptake of the provisions of the Protocol by industry, given it is not yet in force globally. The Protocol is expected to come into force globally by early 2024, at which point evidence will start to become available on uptake in other countries.

**BUSINESS ASSESSMENT (Option 6)**

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: NQ
Costs: NQ	Benefits: NQ	Net: NQ	

<sup>1</sup> External estimate for international revenues in the rolling stock industry in 2022,  
<https://www.marketsandmarkets.com/Market-Reports/rolling-stock-market-4380892.html>

## 1.0 Policy Rationale

### Policy background

1. The Cape Town Convention on International Interests in Mobile Equipment ('The Convention')<sup>98</sup> was signed in November 2001 under the guidance of the International Institute for the Unification of Private Law ('UNIDROT'). It relates to the creation and registration of international interests in "mobile/moveable equipment". There are four Protocols under the Convention concerning different types of mobile equipment: aircraft, railway rolling stock (the Luxembourg Protocol and the Protocol subject to this initial impact assessment), space assets and mining, agricultural and construction equipment.
2. The Convention establishes a new international system of registering financial interests, and also creates priority for creditors' interests in the hierarchy of debts in the event the keeper of mobile equipment becomes insolvent, or defaults on debts. The Protocol requires each item of rolling stock to be uniquely and permanently identified through a new unique rail vehicle identification system (URVIS). It also creates the international registry for those interests and provides for the functioning of that registry. Those internationally registered financial interests will then be recognised in Signatory State legal systems and become enforceable in those states. It is hoped this will allow for the increased availability of and lower cost financing for the building and leasing of these moveable objects within signatory states, by enabling financing across borders with reduced risks for lenders. The more countries that ratify the Protocol, the greater the benefit and opportunities will be – particularly for rolling stock crossing jurisdictions.
3. The Luxembourg Protocol to the Cape Town Convention ('the Protocol')<sup>99</sup> makes specific provision for those financial interests in terms of all types of railway vehicles **on a voluntary basis**. The voluntary nature of the Protocol means that companies with a financial interest in railway rolling stock would have the option to register that interest (and therefore to take advantage of the benefits and financial protections the Protocol provide), or alternatively to agree financing terms *without* registering a financial interest under the terms of the Protocol. By virtue of the provision being voluntary, we would expect to see registration of financial interests only where there is a commercial rationale for companies to do so. If the expected benefits of the Protocol are realised ie. the cost of financing is reduced, then there will likely be a strong motivation for companies to register interests. Imperfect information, for example where creditors do not have clear information on the insolvency risk to lessors, could also drive creditors or rolling stock owners to seek protections under the Protocol, or for insurers or other financial institutions involved in the transaction to make the Protocol terms a requirement of the lending arrangement. This will ultimately be a decision for companies.
4. The UK signed the Protocol in 2016. Four signatory states were required to ratify the Protocol before it could come into full effect. In January 2023, the Protocol had its fourth ratification (Spain). The other three countries that have ratified are Sweden, Luxembourg and Gabon. Others are also in the process of ratifying. Therefore the minimum number of ratifying states has been reached for the Protocol to come into effect. The International Registry is now in development and once approved by the Supervisory Authority, the Protocol will come into force. This is expected to be finalised by early 2024 at the latest.
5. The UK Government has already implemented the Convention (but only as it relates to aircraft) and the Aircraft Protocol in 2015<sup>100</sup> (led on by the Department for Business, Energy and Industrial Strategy ('BEIS')). However, this was implemented and ratified using a

<sup>98</sup> <https://www.unidroit.org/instruments/security-interests/cape-town-convention/>

<sup>99</sup> [https://otif.org/fileadmin/user\\_upload/otif\\_verlinkte\\_files/04\\_recht/07\\_dipl\\_konf/DOCs\\_e/DCME\\_LUXEMBOURG\\_PROTOCOL\\_FINAL\\_04.06.07.pdf](https://otif.org/fileadmin/user_upload/otif_verlinkte_files/04_recht/07_dipl_konf/DOCs_e/DCME_LUXEMBOURG_PROTOCOL_FINAL_04.06.07.pdf)

<sup>100</sup> [The International Interests in Aircraft Equipment \(Cape Town Convention\) Regulations 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

combination of powers under the European Communities Act 1972 (first by designating those as EU treaties, and then implementing the Convention and Aircraft Protocol using the powers in that Act to implement EU treaties). The EU has ratified both the Aircraft and Luxembourg Protocols as a Regional Economic Integration Organisation<sup>101</sup>. After the decision in the UK's European Union referendum in 2016, using this legal route for implementation in the UK is now no longer possible.

6. Therefore, the Department for Transport ('DfT') is seeking provision in the upcoming Rail Reform Bill to give the Secretary of State for Transport the authority to make a statutory instrument ('SI'), which would enable the Government to implement the terms of the Convention and the Protocol as it relates specifically to rail vehicles. Once implemented via subsequent secondary legislation, the Government then intends to ratify the Convention and the Protocol. It is worth noting that the Protocol will not come into effect in the UK until it is implemented through secondary legislation and the UK ratifies the Convention and Protocol via CRAG.
7. If the UK did not ratify the Protocol then it would not be able to benefit from the Protocol in full and companies' registered interests would not be recognised in the UK, making the UK potentially a less attractive place to invest or hold financial interests in rolling stock. Without ratifying the Protocol, UK companies would technically be able to take limited advantage of the Protocol by registering interests in rolling stock in countries that had ratified the Protocol, however this would only be beneficial if the rolling stock was located or exported to the ratifying country. UK ratification of the Protocol would enable creditors of rolling stock based in the UK to benefit from the protections under the Protocol.
8. Train operators in the UK typically lease rolling stock rather than own it outright, and even where operators do purchase rolling stock, this is often financed by lenders. Rolling stock leasing companies (ROSCOs) own most of the coaches, locomotives and freight wagons in operation on the GB railway, which are leased to train and freight operating companies (TOCs and FOCs respectively). ROSCOs are also often responsible for the maintenance and building of these vehicles. ROSCO costs are therefore inherited by TOCs and FOCs, and further by rail users. There are 10 registered ROSCOs in the UK<sup>102</sup> which lease rolling stock out to approximately 40 TOCs/FOCs. Similar rolling stock leasing companies exist in other countries, leasing and financing vehicles to private rail operators, including several in Europe.

### Problem under consideration

9. Railway rolling stock is a significant cost of any infrastructure project or transport operator. The Protocol looks to implement a new international system which aims, on a voluntary basis, to provide more security for creditors financing rolling stock in participating jurisdictions by reducing the level of risk to the financiers involved in these transactions and providing greater security over their interests. It aims to drive competitive funding rates by alleviating the burden of investing in rolling stock and remove the risks that could be deterring private investment – particularly where transactions or financing activities take place across differing jurisdictions (e.g. between two countries). The Protocol does this by establishing an international legal framework for the creation and registration of international interests in rolling stock (which allows creditors the option to register an interest in an asset) which must be recognised by the contracting parties' insolvency law and Courts, providing legal remedies for default or insolvency. Given that railway rolling stock is a mobile asset, creditors

<sup>101</sup> A Regional Economic Integration Organisation is an organisation constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorised, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

<sup>102</sup> [Rolling stock companies | Office of Rail and Road \(orr.gov.uk\)](https://www.orr.gov.uk/rolling-stock-companies)

seeking protection for their investment would currently have to register interests in multiple jurisdictions, some of which may not grant similar protections. The Convention and Protocol introduce an option for enhanced protections for creditors, so that financial transactions can take place across borders that otherwise would either be more expensive or simply would not be an option. Creditors will be able to register interests on a voluntary basis, so we can reasonably assume that this will only be done where there is a commercial rationale to do so.

10. The Government originally intended to implement the protocol using powers in section 2(2) of the European Communities Act 1972, however, these powers were revoked by European Union (Withdrawal) Act 2018 following the UK's departure from the EU. Therefore, new powers are needed to make secondary legislation to implement the Protocol.

## Rationale for intervention

11. Intervention is required to address a gap in the regulatory framework around rail rolling stock financing. A functioning market requires a legal basis for enforcing obligations, which in turn provides security and certainty for market participants. The powers contained in the Protocol will allow the Government to establish such a framework and legal basis.
12. At present there is a risk that lessors of railway rolling stock have limited means of recovering significant debts should the lessee fall into insolvency, particularly given the mobile nature of rolling stock and potential imperfect information about its whereabouts in the case of insolvency. Lack of international security for those debts, particularly given the significant cost of railway rolling stock, can act as a barrier to private financing initiatives, especially where parties are based in different jurisdictions, which can lead to lower availability of financing, higher financing costs or both. Any lessor would currently have to register interests in different countries to which the rolling stock might operate; and those interests may not be registrable or enforceable in some jurisdictions, meaning difficulty and expense is incurred for the owner of the asset to protect their investment – particularly if the recovery process is significantly protracted over several months - which ultimately results in those financing costs being passed on to the lessee.<sup>103</sup> The rate of insolvency of rolling stock lessee's and therefore the scale of the problem, is currently not known but we intend to address this evidence gap through surveying industry in subsequent consultation, (see section 5 for further detail).
13. The Convention and Protocol aim to create international financial interests in rolling stock and allow those interests to be enforced in the courts of Contracting states. Contracting Parties to the Protocol are required to ensure their domestic legislation and courts recognise these financial interests in case of insolvency proceedings. Only states can become contracting parties, thereby ensuring consistency across different jurisdictions, and providing investors with security across borders.
14. Ratifying the Luxembourg Protocol will reduce both risk to creditors and therefore the transaction costs of railway rolling stock by establishing an international legal framework and register of interests (these benefits will be measured using data on insolvency risk and transaction costs that we intend to collect during the consultation – see section 5 for further

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<sup>103</sup>[A Modeling Framework for Asset Based Financing: \(awg.aero\)](#)

This 2010 academic paper considered the benefits of the Aircraft Protocol to the UK and concluded that it would decrease the risk involved in financing aircraft, and therefore reduce the costs involved in financing of aircraft. The paper found that UK lenders and lessors would benefit from the reduced financing of aircraft both registered in the UK, and that which UK lenders register in other jurisdictions, by encouraging ratification by other States around the world. Ratification therefore reduces barriers to financing international mobile assets and creates cost savings which could be passed on to the travelling public.

detail). The Protocol allows an easier repossession of collateral on default, minimising risk, and lower financing costs. These in turn increase the availability of and reduce the cost of rolling stock credit, broadening the range of financing alternatives available to train manufacturing and train operating companies, and helping to ensure the growth of rail is not constrained by the availability of funding. This framework also provides new opportunities for UK-based lenders and leasing companies to participate in transactions overseas, increasing the attractiveness of UK businesses, promoting exports and the competitiveness of UK-based lenders.

## Policy objective

15. The policy objective, at this stage, is to provide a power in the upcoming Rail Reform Bill which will allow the Secretary of State for Transport to subsequently make regulations which will allow for the full implementation of the Convention (as it relates to railway rolling stock) and the Protocol via CRAG. This will also allow for the making of a connected provision, amendments to primary legislation relating to insolvency, and other consequential amendments to ensure that the international interest created by the Convention and Protocol can be properly registered and enforced. Government has committed to a consultation and impact assessments prior to implementation of consequential amendments (indicative research questions are detailed in section 5). Without this power, it will not be possible to implement the Protocol and the benefits it could provide for the private financing of rolling stock in the UK, and UK financiers operating overseas.
16. The Luxembourg Rail Protocol aims to reduce the cost of finance for rolling stock and leasing companies by reducing the level of risk to the financiers involved in these transactions. This in turn could facilitate new financing options for lessors, manufacturers and train operating companies, as well support lower financing generally which could encourage new rolling stock deals. The Protocol establishes an international legal framework for the creation and registration of international interests (such as mortgages and leases) in rolling stock, as well as legal remedies for default or insolvency – provisions which business can choose to use where commercially beneficial. This will support the rail sector in signatory states to unlock and realise the benefits of finance, inward investment and exports, further reducing deterrents to market entry.
17. It is worth reiterating that the Protocol is yet to come into force globally. It has now had the required four ratifications (of the 20 signatory states to the Protocol<sup>104</sup>) which will now enable it to come into force. Those countries are Sweden, Luxembourg, Gabon and most recently Spain. Current signatory and ratifying states include those with major rolling stock manufacturing companies, including Spain, France and Switzerland, all of which supply the UK rail market. Once the Supervisory Authority has approved the International Registry (expected early 2024 at the latest) then the Protocol will come into force.

## Options considered

### Option 0 – Do nothing

18. In this option, we assume no Government action. Without a primary power, the UK cannot make secondary legislation to implement the Convention and the Protocol (as they relate to rail rolling stock) with no other viable alternative legislative mechanisms looking likely. This could possibly mean that without a primary power or further opportunity, the implementation

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<sup>104</sup> [States Parties - UNIDROIT](#)

of the Protocol would not happen in the UK, representing a missed opportunity to the UK rail sector and denting the UK's international reputation.

19. If the UK did not implement the Protocol then there would be no immediate impact to the rail rolling stock market in the UK, however, when the Protocol comes into force (which is expected early 2024 at the latest), the UK rail sector may not benefit from new, lower cost financing opportunities as in other countries, as other signatory states ratify and utilise the benefits and protections provided by the Protocol. Whilst UK financing companies could still in theory take advantage of the benefits provided by the Protocol in other ratifying states, the UK would not be seen to be doing its part to support this new international legal framework, having already signed the Protocol in 2016, undermining our international commitments and reputation.
20. Further, the UK committed to implementing the Protocol by signing up to it in 2016. There is a risk in further delaying the implementation of the Protocol, that the UK is seen as unreliable and not prepared to fulfil its international obligations.

### **Option 1 – Introduce a primary power to subsequently implement the Protocol through secondary legislation**

21. In this option, the proposed power to the Secretary of State is introduced, meaning the UK is able to proceed with secondary legislation to implement the Convention and the Protocol (as they relate to rail rolling stock), and then ultimately ratify it using the Constitutional Reform and Governance Act 2010 (CRAG).
22. Implementing the Protocol via secondary legislation could reduce the cost of finance for rolling stock and leasing companies, potentially increasing the attractiveness of the UK to participate in rolling stock financing/leasing arrangements. This could help to attract additional private sector investment into the UK rail market, which was worth £512m in the year to March 2022.<sup>105</sup> The financing benefit estimates will be further developed at the secondary legislation stage, but external analysis commissioned by UNIDROIT (the international body which oversees the Protocol) calculates the annual financial gain to the UK as £120m in nominal terms.<sup>106</sup>

### **Option 2 – Seek other opportunities to implement the Protocol (for example via other primary or secondary legislation)**

23. The Government could explore other legislative vehicles to support the implementation of the Protocol both through existing and upcoming legislation, albeit no such vehicles have yet been identified due to the wide-ranging nature of the Protocol and the various area of law it interacts with (e.g. rail safety and technical standards, rail markets, financial sector and insolvency). This would likely mean implementation would happen over a prolonged period on a piecemeal basis, if at all, particularly if no other suitable primary legislation was available and the Government had to rely solely on existing powers which are likely to be insufficient on their own. This would increase the risk that the UK implements the Protocol in an incoherent or insufficient manner, if at all, likely proving to be a missed opportunity for the rail market to capitalise on the potential benefits and opportunities presented by the Protocol. It is highly unlikely the Government would be able to fully implement the Protocol without new

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<sup>105</sup> ORR data Table 7290 - Private sector investment in the rail industry (excludes Network Rail investment) <https://dataportal.orr.gov.uk/statistics/finance/rail-industry-finance/table-7290-private-sector-investment-in-the-rail-industry-excludes-network-rail-investment/>

<sup>106</sup> The Luxembourg Rail Protocol to the Cape Town Convention: Its positive impact on the cost of financing railway rolling stock in the UK A UK-specific update to the 2018 Oxera study prepared for the Rail Working Group, <https://www.railworkinggroup.org/wp-content/uploads/docs/R0943.pdf>

primary powers, meaning that creditors/lessors in the UK market would be unable to benefit from the additional protections provided under the Protocol.

**Option 1 is the preferred option since it addresses the policy objective.**

24. This is the only feasible option to implement the Protocol as, without new primary powers, no alternative legal vehicles have been identified that will enable implementation, thereby enabling the UK to meet its international obligations. It is worth noting that the Protocol will not come into effect in the UK until it is implemented through secondary legislation and the UK ratifies the Convention and Protocol via CRAG. At this stage the UK is seeking the power to ensure the full implementation of the Convention and Protocol before the UK moves to ratify them. The Government has committed to run a consultation and further impact assessment on the implementation of the Protocol prior to that secondary legislation, and indicative research questions for these are detailed in section 5.

## Alternatives to Regulation

25. With regards to the core policy (i.e. the power to implement the Convention and Protocol into UK law), the current powers are determined by existing regulation and further regulation is therefore the only means of achieving the policy objective.
26. It is not possible to implement the Protocol without regulation, which requires both primary and secondary legislation, as the Protocol requires amendments to UK law in order to bring the UK into compliance and to meet our legal obligations under the treaty.

## 2.0 Costs and Benefits

27. Option 1 provides Government with the power to implement the Protocol via secondary legislation, meaning that any necessary consequential amendments to other legislation (e.g. insolvency law) can be made without the need for further primary legislation.
28. The proposed policy provides Government with the ability to implement a Protocol which is not currently in force globally. It will also only be implemented following subsequent secondary legislation. Consequently, the impacts of the proposed policy are uncertain. In accordance with Regulatory Policy Committee guidance<sup>107</sup> regarding impact assessments supporting primary legislation, we consider the impacts of the whole policy, i.e. including the impacts of the policy itself and also any related secondary legislation, and indicative research questions to be used in further impact assessment, consultation and post-implementation are detailed in section 5.
29. There will be no immediate impacts as a result of the creation of these powers. Any costs and benefits that arise as a result of secondary legislation will be further explored with consultation and further impact assessment as and when this policy is developed, with an indicative estimation of costs included below. The distribution of costs and benefits is uncertain at this stage – for instance, Rolling Stock Leasing Companies (ROSCOs) would likely benefit from lower financing cost if the secondary legislation is implemented, but these could also be passed down onto TOCs and onto passengers depending on market conditions.
30. There are uncertainties in the costs of the implementation of the Protocol which will be further detailed at the secondary legislation stage, including using data from the Supervisory Authority which we expect to be operational by then. We expect there to be limited impacts for existing rolling stock leases, TOCs and FOCs unless new finance is taken out after implementation of the Protocol or those with existing financial interests in rolling stock

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/827907/RPC\\_case\\_histories\\_-\\_Primary\\_legislation\\_\\_August\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827907/RPC_case_histories_-_Primary_legislation__August_2019.pdf)



choose or are required (e.g. by their lenders) to register that interest on the international registry. There will be costs of registering an international interest if such an interest is taken over rolling stock, whether that operates in the UK or elsewhere, and that cost is borne by the company which owns the rolling stock. The charging framework for the registry is yet to be fully confirmed by the Rail Working Group (RWG), an industry group established under the auspices of the UN to support the implementation of the Protocol, and the Supervisory Authority which will oversee the Registry, but we understand registration costs per asset are likely to be low. Importantly, registration of interests will be done on a voluntary basis so we can reasonably assume that this cost will only be incurred where the registration of an interest is commercially beneficial to the business in question. Given that the Protocol is not currently in force and final details of the Protocol's operation, such as the registry's charging framework are yet to be confirmed, and the uncertainty over the precise contents of any subsequent secondary legislation, it is not possible at this time to provide a final quantitative estimate of the policy, including the impacts of related secondary legislation. An indicative assessment of costs is included below. It should be highlighted that the precise implementation of the Protocol (including whether the UK Government should make reservations against the Protocol which would limit the impact of certain measures) will be subject to a further consultation and impact assessment prior to any secondary legislation being made, and which Government has committed to. (Plans to collect further data on currently unknown costs as part of the prior consultation and impact assessment are detailed in section 5).

31. Therefore a qualitative assessment of the scale and direction of impacts is given for options 0 and 1, as well as illustrative potential costs for businesses where secondary legislation is to be implemented. The illustrative analysis provides the basis for a more in-depth quantification of impacts at the secondary legislation stage, when a number of uncertainties will be removed.

### Option 0 – Do Nothing

32. In the “do nothing” case, in which we anticipate no intervention, the UK would not have the necessary legislative vehicle to implement the terms of the Protocol. The impact of Option 0 compared with Option 1 is therefore the delay and the lack of the necessary power to implement future secondary legislation, meaning the UK will not be able to implement and ratify the Protocol. There would be no expected change to the international financing arrangements relating to the leasing of rolling stock, and current levels of investment (£512m in the year to March 2022)<sup>108</sup> and ROSCOs (10 registered ROSCOs in the UK)<sup>109</sup> would not be impacted.

### Option 1 – Primary power to subsequently implement the Protocol through secondary legislation

33. Under Option 1, the Government would have the ability to create secondary legislation to implement the Protocol, which allows the UK to ratify it. The net impact of Option 1 compared with Option 0 is that this will allow primary powers to be introduced more efficiently and effectively than in Option 0. It is worth reiterating that this is subject to a lot of unknowns, therefore the below table has been populated based on expected impacts using qualitative assessments. In the case of secondary legislation being introduced, registering existing vehicles will likely have a “low” cost. Benefits are expected to accrue from reduced borrowing and transaction costs. An external report prepared for the RWG, estimates the benefit of reduced financing cost as “high”, that is around £5.2bn in present values over a thirty-year

<sup>108</sup> ORR data Table 7290 - Private sector investment in the rail industry (excludes Network Rail investment) <https://dataportal.orr.gov.uk/statistics/finance/rail-industry-finance/table-7290-private-sector-investment-in-the-rail-industry-excludes-network-rail-investment/>

<sup>109</sup> [Rolling stock companies | Office of Rail and Road \(orr.gov.uk\)](https://www.orr.gov.uk/rolling-stock-companies)

appraisal period.<sup>110</sup> This is external analysis and has not been internally assured, it should therefore be used for indicative purposes only to provide an indication of the scale of potential economic benefits.

**Table 18: indicative cost and benefits**

<b>Cost/Benefit</b>	<b>Stakeholder Impacted</b>	<b>Short-term Impact Severity (Expected)</b> (with four ratifying states)	<b>Medium to Long-term Impact Severity (Expected)</b> (with more than four ratifying states – this becomes increasingly likely in the medium – long term)
Transition cost (familiarisation cost and initial registration of existing vehicles)	ROSCOs, TOCs and FOCs	Negative, low	Negative, low
Ongoing cost of registration of interests (new / leased / sold / scrapped vehicle registration)	ROSCOs or TOCs/ FOCs	Negative, low	Negative, low
Operational Costs	ORR	Negative, Low	Negative, Low
Benefit of reduced risk and transaction cost	TOCs, FOCs, rail users	Positive, high	Positive, high
Wider Impacts	ROSCOs, TOCs, FOCs, rail users	Positive, high	Positive, medium

*NB – Railway Rolling Stock Manufacturers and Leasing Companies (ROSCOs), Train Operating Companies (TOCs), Freight Operating Companies (FOCs)*

## Summary

34. The primary benefit to these specific powers is to allow the UK to implement and subsequently ratify an international treaty which the UK has become a signatory party to.
35. To assist in illustrating the impacts that these powers may result in we consider the intention behind the Protocol and the potentially impacted parties. It should be reiterated that **consultation and impact assessment will be conducted in the future, prior to any subsequent use of the proposed powers** and indicative research questions are included in the 'Post implementation review' section below.
36. The bullet list below provides a summary of the benefits and costs identified, who will be impacted and potential impact. It is worth noting that these are illustrative and not exhaustive. We are unable to reasonably quantify benefits and costs given the Protocol is not in force yet and only a small number of countries have ratified it. The list below may also be subject to change pending further policy development:

### The Protocol – impacted parties:

- Train and Freight Operating Companies (TOCS and FOCs): potential benefit in accessing competitive and better value financing for rail rolling stock.
- Rolling stock manufacturers & leasing companies (ROSCOS):
  - Benefits in relation to better access to the international market thanks to the simplified legal framework and greater security in leasing to TOCs/FOCs in other countries;
  - Potential administrative costs of registering international interests in new rolling stock under the terms of the rolling stock;

<sup>110</sup> [New report shows how Luxembourg Rail Protocol can save the UK up to £ 5.2 bn » Rail Working Group](#)

- Potential administrative costs of reviewing existing financing contracts and potentially registering financial interests, under the terms of the Protocol, in existing assets if required by lenders – there is no retrospective obligation under the Protocol; and
  - Potential costs (though these are uncertain) of physically identifying the rolling stock subject to the international interest (such as affixing a separate number to the rolling stock concerned).
- UK credit institutions: Financial benefits of cheaper national and international lending with greater securities for institutions participating in overseas transactions where these relate to railway rolling stock.
  - Office of Rail and Road (ORR): there may be some one-off familiarisation costs for ORR, as the GB regulator which maintains a rolling stock vehicle database in the UK, which may have interactions with the international registry established under the Protocol. This remains subject to further consideration as implementation details become clearer, however we expect any familiarisation costs to be very low.

### **Costs**

- Direct cost of familiarisation for all businesses impacted (ROSCOs, TOCs, FOCs and ORR) – these costs could be more substantial where business register an international interest;
- Where business choose to register an interest, nominal charge to register the international interest in the registry, representing a direct cost;
- A (potential) nominal charge for issuing a unique identification number for a vehicle which is subject to a registered interest, representing a direct cost;
- A (potential) nominal charge for a plate to be attached to rolling stock which is subject to a registered interest, representing a direct cost.

### **Benefits**

- Indirect benefit from reduced premiums for purchasing rolling stock;
- Indirect benefit from reduced risk on financiers and businesses who lease rolling stock;
- Indirect benefit of facilitating leasing arrangements, which open up the market to new competition, provide more flexibility for operators and drive standardisation of equipment.

## **Direct costs for businesses and rationale for DMA status (at secondary legislation stage)**

### *Indicative familiarisation costs*

37. The following analysis estimates the familiarisation costs to businesses upon introduction of the Luxembourg Protocol. This represents a one-off direct cost to business. It is assumed that a chief executive or senior official, a financial manager, and a legal professional would form the management team familiarising themselves with the Protocol. Hourly median wages

for these workers are outlined below, with non-wage costs included to account for the organisational cost.<sup>111,112</sup>

<b>Job role</b>	<b>Median hourly wage (excl. overtime)</b>	<b>Median hourly labour costs (incl. non-wage costs)</b>
Chief executives and Senior Officials	£37.43	£44.13
Financial manager	£31.96	£37.68
Legal Professionals	£23.27	£27.44
<b>Total</b>	<b>£92.66</b>	<b>£109.25</b>

38. We assume that all rolling stock leasing and manufacturing companies that operate in the UK will incur familiarisation costs, as well as all TOCs (franchise, open access, and light rail) and freight operators. In total this covers 53 businesses in the rail sector.<sup>113</sup> Further, we assume that on average it will take eight hours per business to familiarise themselves with the Protocol in the central case.<sup>114</sup> This produces the following total familiarisation costs for businesses:

<b>Scenario</b>	<b>Estimated number of businesses</b>	<b>Estimated hourly labour cost of familiarisation team</b>	<b>Hours taken</b>	<b>Total familiarisation cost (nominal)</b>
Central	53	£109	8	£46,216
High (assumes 50% increase in hourly cost and hours)	53	£164	12	£104,304
Low (assumes 50% decrease in hourly cost and hours)	53	£55	4	£11,660

*Indicative costs of registering an interest and affixing plates*

39. Costs to business as a result of the Protocol being implemented are incurred where the holder of an international financial interest in rolling stock wishes to register with the international registry (in order to have access to the additional remedies if the debtor

<sup>111</sup> Estimated from latest ONS Index of Labour Costs per Hour publication.

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/indexoflabourcostsperhour/ich/julytoseptember2020> Here, the non-wage labour cost uplift uses 2019 Q4 to 2020 Q3 figures (seasonally adjusted). To estimate the uplift, non-wage costs per hour as a proportion of total labour costs (15%) are divided by wage costs per hour as a proportion of total labour costs (85%) (i.e.  $0.152/0.848=0.179$ ). Therefore, we have uplifted wages by 17.9% to get an estimate of total labour costs.

<sup>112</sup> ONS (2022). Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14.6a Hourly pay – Excluding overtime (£) – For all employee jobs: United Kingdom, 2022. Chief executives and senior officials (SOC:111), financial managers (SOC:1131), Legal professionals (SOC:241). <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashtable14>

<sup>113</sup> <https://www.orr.gov.uk/about/who-we-work-with/industry> and <https://www.orr.gov.uk/about/who-we-work-with/railway-networks/light-rail-tramways>

<sup>114</sup> This is likely to vary across organisations and is a high-level assumption, and is adjusted in the high and low case scenarios.

defaults), which will be done on a voluntary basis. We can therefore assume that this will only be done where there is a commercial rationale to do so.

40. An international interest is registered under the Convention, and it's likely that each interest would cover multiple "vehicles" (in this context a "vehicle" is each individual passenger carriage, locomotive/power unit, freight wagon etc). The cost of registration is yet to be determined, but following engagement with industry experts we expect it to be in the region of £25. The equivalent cost of registering an aircraft, a far more complex and expensive asset, under the protocol is \$100 USD (approximately £78). We therefore use £25 as the central case benchmark and £78 as the high scenario, given the industry experts opinion that the actual cost for the registering a vehicle under the Luxembourg Protocol to be lower.
41. Each individual vehicle will require a unique identification number. This may be issued by the International Registry, or by regional or national systems if agreed, or where already established, for example the UK National Vehicle Register. This unique identification number will be affixed to the vehicle on a plate, which would be a one-off cost and, through engagement with industry experts, we expect this to cost less than £10 per plate.
42. Were businesses to register an interest in existing rolling stock, this would incur a one-off registration and plate cost that would vary in total size by the number of businesses that voluntarily decide to proceed. There are a total of 15,277 existing rolling stock vehicles in the UK.<sup>115</sup> The cost would vary as follows, with indicative assumptions made in each scenario on the number of existing vehicles registered:

**Table 19:**

Scenario	Total number of existing rolling stock vehicles registered	Cost of registering an interest	Cost of affixing a plate	Total one-off cost (nominal)
Central (assumes two thirds of existing vehicles registered)	10,083	£25	£10	£352,905
High (assumes all existing vehicles are registered, 50% increase in plate cost)	15,277	£78	£15	£1,420,761
Low (assumes one third of existing vehicles are registered, assumes 50% decrease in registration and plate cost)	5,041	£13	£5	£90,738

43. In terms of the annual ongoing cost, on average over the past 20 years, (2000-2022), an annual average of 565 rolling stock vehicles have been financed per year.<sup>116</sup> In reality, each vehicle that is registered isn't a full train but a single carriage. What would need to be registered is each international interest, which would likely cover multiple trains, which in turn includes multiple carriages.
44. On this basis, the annual costs of registering an interest and affixing registration plates is estimated as follows:

<sup>115</sup> <https://dataportal.orr.gov.uk/statistics/infrastructure-and-emissions/rail-infrastructure-and-assets/table-6314-rolling-stock-vehicles-by-traction-type-and-operator/>

<sup>116</sup> DfT data on rolling stock lease orders, received from ROSCOs/TOCs

Scenario	Annual number of rolling stock vehicles financed	Cost of registering an interest	Cost of affixing a plate	Total annual cost (nominal)
Central	565	£25	£10	£19,775
High (assumes 50% increase in no. vehicles financed and plate cost)	848	£78	£15	£78,864
Low (assumes 50% decrease in no. vehicles financed, registration and plate cost)	283	£13	£5	£5,094

### Justification for DMA

The following table combines one-off and ongoing costs:

**Table 20:**

Scenario	Combined one off costs (familiarisation; registration of existing vehicles)	Annual on-going costs (registration for new vehicles)
Central	£399,121	£19,775
High	£1,525,065	£78,864
Low	£102,398	£5,094

45. To demonstrate the low likelihood of the equivalent annual net direct cost to business (EANDCB) exceeding £5m, and therefore the threshold for a De Minimis Assessment (DMA), we can calculate the expected cost in year one, which represents the maximum expected in any single year. This covers the combined one-off costs in the 'high' scenario following the introduction of the protocol, plus annual costs and equals £1,603,929. Therefore costs would need to more than triple in the 'high' scenario for the DMA threshold to be hit. Each and every subsequent year will be much lower, making the likelihood of an EANDCB greater than £5m over a five or ten year appraisal period extremely low.

### Consultation

46. A public consultation was conducted on the policies proposed as part of rail reform and their impacts.<sup>117</sup> The consultation was aimed at key stakeholders across the rail industry including ROSCOs, TOCs, FOCs, business representative groups, regional / local / combined authorities, infrastructure organisations, not-for-profit organisations, sustainable travel groups, sub-national transport authorities and unions.
47. The consultation included a question as to whether responders agreed with the Government's proposals to give itself the primary power to subsequently implement the Protocol. The received comments ranged; the majority of stakeholders were supportive (some stakeholders were supportive in principle but wanted to see further evidence and analysis of the benefits the Protocol would bring to the UK - all of which Government has committed to conduct before introducing secondary legislation). A very small number of stakeholders were against the proposal as they felt the Protocol would add unnecessary cost and complexity to current and future rolling stock financing arrangements. It should be noted at this point that registering rolling stock with the protocol is voluntary. The concerns raised by those small number of stakeholders will be considered fully when the Government consults on the Protocol, in full, prior to implementation.

## 3.0 Risks and unintended consequences

<sup>117</sup> [Williams-Shapps Plan for Rail: consultation on legislation to implement rail transformation](#)

48. The specific risks and impacts of implementing the Protocol will be considered in detail in the impact assessment accompanying the subsequent secondary legislation, and in the subsequent post-implementation review (see section 5 for indicative research questions and further detail). So far, the Protocol has 12 signatories (which includes the European Union in its own right) and the required four countries have ratified it, however it is yet to be in force but it is expected to be by early 2024 at the latest. At this stage, we have only a partial understanding of risks / unintended consequences associated with future regulatory interventions due to the fact that the Protocol is not yet in force and final details as to how the Protocol will operate in practice are not yet confirmed.
49. One potential risk is the incurring of unforeseen costs to Railway Rolling Stock Manufacturers and Leasing Companies (ROSCOs), Train Operating Companies (TOCs), Freight Operating Companies (FOCs) associated with familiarisation or ongoing management of assets (sale, purchase, lease, scrap) - both for new and existing assets. On the latter, there is a risk that registration of assets becomes a requirement of insurance policies for existing assets, with leasing companies, lenders and operators potentially incurring additional costs as a result. However if registration under the Protocol reduces the risk of insuring rolling stock, then this could potentially reduce premiums and/or increase margins for insurance companies. Our assessment, with reference to the impacts of the Aircraft Protocol, suggests that if costs are incurred they should be limited, but as this is by nature an innovative policy, limitation of costs cannot be absolutely guaranteed at this stage.
50. Another risk is that market incumbents lose significant market share to entrants who exploit the opportunity to manufacture / lease rolling stock at reduced cost and without legacy transition costs. This scenario is unlikely as leasing arrangements could be renegotiated under the terms of the Luxembourg Rail Protocol to closer match those of any new entrants.
51. Finally, the Protocol allows for signatory states to implement parts of it in different ways, including to reserve the right to act in a certain way to protect public service obligations, or, in the UK's case, Passenger Service Contracts (previously known as franchises). Therefore, another risk is that the UK or other contracting parties include reservations or 'declarations' when implementing the Protocol which could undermine the benefits by providing less security for creditors.

## 4.0 Wider impacts

### 4.1 Innovation Test

52. The required four signatory states have ratified the Protocol, meaning the Protocol can now come into effect, subject to the Supervisory Authority approving the International Registry (expected early 2024 at the latest). The introduction of the Protocol is inherently innovative, and the proposed legislation is designed to enable the UK to better facilitate the railway rolling stock market, increase export and financing opportunities and reduce deterrents to market entry. While implementation of the Protocol will not remove risk of insolvency altogether, it would mean that creditors financing rolling stock would be exposed to a significantly smaller degree of security risk, in the event of default or insolvency when rolling stock is located in an external territory.
53. Whilst the expected registration costs (which will be voluntary) may mean that the scope for innovation is limited initially, the Protocol will also unlock finance which could facilitate innovation, for example in aiding the transition to decarbonised rail networks.
54. Further the Protocol should facilitate entry to the railway rolling stock market which could also encourage innovation.

### 4.2 Small and Micro Business Assessment

55. Small and micro businesses, and businesses up to 499 employees, have not been exempted from these primary legislation powers, however, at this stage, we consider it very unlikely that any small or micro businesses will be directly affected by the legislation. The companies affected directly by the legislation will be ROSCOs, FOCs and TOCs, all of which are very large businesses, with the exception of one TOC and all open access operators (OAO), with employees typically in the range of 99-499. The impact of subsequent secondary legislation on medium, small and micro businesses will be considered during the separate impact assessment which Government have committed to conducting prior to the implementation of any such legislation.
56. The following table shows the size of franchise TOCs operating in the market, by number of employees<sup>118</sup>. The average TOC has several thousand employees and far exceeds the 499 employees threshold. Only one TOC has below the 499 employee threshold and would therefore need to be considered in any impact assessments accompanying future secondary legislation.

**Table 21: number of TOC employees**

Train operating company	Number of employees
Govia Thameslink Railway	7,245
Northern Trains	6,912
Great Western Railway	6,185
South Western Railway	5,217
ScotRail	4,968
Southeastern	4,481
Avanti West Coast	3,297
London North Eastern Railway	3,240
TfW Rail	2,993
West Midlands Trains	2,948
Greater Anglia	2,792
East Midlands Railway	2,410
CrossCountry	1,854
TransPennine Express	1,602
London Overground	1,505
Elizabeth line	1,277
Merseyrail	1,225
Chiltern Railways	866
c2c	639
Caledonian Sleeper	198

57. With the exception of Eurostar (who we estimate employ approximately 1600 people), non-franchised operators generally have fewer employees, as shown in the table below<sup>119</sup>. Consequently these will be a focus of future SAMBAs in impact assessments accompanying secondary legislation.

**Table 22: number of TOC (open access) employees**

<sup>118</sup> Table 2233 - Full-time equivalent (FTE) employees by operator, as of March 2023. <https://dataportal.orr.gov.uk/statistics/compendia/toc-key-statistics/>

<sup>119</sup> Table 2233 - Full-time equivalent (FTE) employees by operator, as of March 2023. <https://dataportal.orr.gov.uk/statistics/compendia/toc-key-statistics/>



Train operating company (open access)	Number of employees
Heathrow Express <sup>120</sup>	169
Grand Central	142
Hull Trains	104
Lumo	100

58. Data on the employee size of freight operators is less readily available, however where data is available it indicates that freight operating companies are large employers e.g. GB Railfreight and DB Cargo UK employ 1,100 and 2,200 workers respectively<sup>121</sup>.
59. Data on the employee size of rolling stock leasing companies is also less readily available. Some ROSCOs are large financial institutions such as GE Capital and Halifax Asset Finance with many thousands of employees. Where data is available, dedicated ROSCOs tend to be smaller e.g. Eversholt Rail has 115 employees and Angel Trains has 130 employees<sup>122</sup>. Along with open access operators, these will also be the focus of future SAMBAs in impact assessments accompanying secondary legislation.

### 4.3 Equalities Impact Assessment

60. An Equalities Impact Assessment (EIA) for this proposed power has been considered, however it has been assessed that there would be no impact on protected characteristics at this stage. However, an EIA will be required at the secondary legislation stage for any proposed changes in the future and this will follow a consultation on the Protocol specifically.

### 4.4 Trade Impact

61. This proposal is not, at this stage, anticipated to have impacts on imports, exports, overall trade (as it relates to railway rolling stock) or investment flows between countries (as it relates to railway rolling stock financing).
62. However, **subsequent secondary legislation** will likely have a positive impact on imports, exports, overall trade or investment flows between countries in relation to railway rolling stock. The trade impacts of these policies will be considered as part of the subsequent impact assessment process.

### Competition Assessment

63. This proposal is not anticipated, at this stage, to have differential impacts on either market incumbents or new entrants. As above, subsequent secondary legislation will likely have a positive impact on competition and these impacts will be considered as part of the impact assessment of these policies.

<sup>120</sup> Heathrow Express operates services on an open access basis but on the basis of a bespoke access and contractual regime agreed pre-privatisation, which is quite distinct from other operators on the network.

<sup>121</sup> GB Railfreight <https://www.gbrailfreight.com/#:~:text=Our%20team%20of%20over%201%2C100,rail%20freight%20with%2099%25%20reliability.>

DB Cargo UK <https://uk.dbcargo.com/rail-uk-en/Our-Company/facts-and-figures>

<sup>122</sup> Eversholt Rail <https://eversholtrail.co.uk/about-us/#:~:text=Eversholt%20Rail%20employs%20approximately%20115%20professional%2C%20technical%20and%20support%20staff.>

Angel Trains <https://angeltrains.co.uk/about/our-people/#:~:text=Trains%20may%20be%20our%20business,staff%20including%20graduates%20and%20apprentices.>

## 5.0 Post implementation review

64. It is proposed that the policy will be reviewed by September 2027.

**Review status:** Please classify with an 'x' and provide any explanations below.

<input type="checkbox"/>	Sunset clause	<input type="checkbox"/>	Other review clause	<input type="checkbox"/>	Political commitment	<input checked="" type="checkbox"/>	Other reason	<input type="checkbox"/>	No plan
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Regulations to be reviewed every three years to ensure continued suitability.

**Expected review date** (month and year, xx/xx):

0	9	/	3	0	Five years from when the Regulations come into force
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### Rationale for PIR approach:

The level of evidence and resourcing for the PIR is proposed to be low, given this legislation concerns the implementing powers for subsequent secondary legislation, and the review will take place within five years of the implementation of the policy.

The immediate impact of the policy in question consists of implementing an international treaty through the use of future secondary legislation, rather than this proposed primary legislation (which is just giving the UK the power to do so). As such, any PIR will be focussed on whether those primary powers have been realised and a PIR will be put in place when the secondary legislation is implemented.

As mentioned in this impact assessment, before this primary power is used to make secondary legislation to implement the Protocol, Government has committed to run a consultation and further impact assessment.

### Key Objectives, Research Questions and Evidence collection plans

Key objectives of the regulation(s)	Key research questions to measure success of objective	Existing evidence/ data	Any plans to collect primary data to answer questions?
To create a power which allows the Secretary of State for Transport to make regulations which will allow for the full implementation of the	N/A at this stage. At secondary legislation stage, we would run a full consultation, develop a comprehensive impact assessment and plan for a post-implementation review. We would commission an industry survey, seeking inputs from TOCs, FOCs, ROSCOs and relevant industry groups to establish quantitative and qualitative data on current market conditions. This would facilitate comparative analysis of the following data after implementation of the Protocol:  <i>Primary measures</i>	N/A at this stage. The Protocol is not yet in force.	N/A at this stage.

<p>Luxembourg Rail Protocol.</p> <p>The subsequent legislation is designed to enable the UK to better facilitate the railway rolling stock market, increase export and financing opportunities and reduce deterrents to railway rolling stock market entry.</p>	<ul style="list-style-type: none"> <li>• Insolvency risk to train operators/rolling stock lessors;</li> <li>• Borrowing/financing costs;</li> <li>• Number of registrations on the International Registry (once operational).</li> </ul> <p><i>Secondary measures</i></p> <ul style="list-style-type: none"> <li>• ROSCO / TOC / FOC operating costs;</li> <li>• Import / export costs.</li> </ul> <p><i>Tertiary measures</i></p> <ul style="list-style-type: none"> <li>• Number of rolling stock leasing/financing market entrants;</li> <li>• Investment in new rolling stock/leasing arrangements.</li> </ul> <p>These would be collected before implementation, 5 years after implementation, and 10 years after implementation, to allow for comparative analysis.</p> <p>Data on the following measures would also be collected during the post-implementation review to analyse transition costs and net impacts:</p> <ul style="list-style-type: none"> <li>• Familiarisation costs e.g. training, resource required</li> <li>• Cost of identification plate (though this will be optional)</li> <li>• Cost of interest registration (also optional)</li> </ul>		
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