



Department
for Transport

Summary of responses to consultation on updating rail markets regulations

Moving Britain Ahead



January 2019

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1. Introduction

Introduction

- 1.1 The Department for Transport (the Department) carried out a public consultation on updating rail markets regulations between 24th April 2018 and 8th June 2018. The Government would like to thank all of those who took the time to respond to the consultation.
- 1.2 The consultation covered the implementation of Directive 2370/2016 (the Directive), part of the Market Pillar¹ of the Fourth Rail Package and asked stakeholders to provide views on how the Directive should be implemented and what, if any, the impacts of implementing the Directive might be.
- 1.3 The Directive amends a previous Directive 2012/34/EU (the recast) which established a single European railway area. The recast itself repealed and consolidated previous EU legislation, primarily the First Railway Package, into one place.
- 1.4 The introduction of a single European railway area brought in common rules on the governance of railway undertakings and infrastructure managers, on infrastructure financing and charging, on conditions of access to railway infrastructure and services and on regulatory oversight of the rail market.
- 1.5 The guiding principle behind the single European railway area is the extension of competition to domestic rail markets and reforming the governance of infrastructure managers with the objective of ensuring equal access to the railway infrastructure.
- 1.6 The Market Pillar builds on this guiding principle as its main objective is to improve competition within the EU single market by extending access rights into domestic passenger services and to further protect the independence and impartiality of infrastructure managers while still allowing for alliancing and joint working between the infrastructure managers and train companies.
- 1.7 Subject to important safeguards to avoid compromising the viability of a franchised (public service contract) route, open access to passenger services enables new rail operators to bid for access to routes which have an existing franchise operator. The Directive also contains clarification and transparency requirements in relation to "vertically integrated structures", those structures where the rail infrastructure and rail passenger services are operated and owned by a single body. Another part of the Market Pillar, EU Regulation 2016/2338, sets out rules on competitive tendering of franchises.
- 1.8 Given our already liberalised rail markets we anticipate that the Directive will have minimal impacts in Great Britain. The Market Pillar was adopted by

¹ As well as Directive 2016/2370, the Market Pillar also includes Regulation 2016/2338 (this relates to the awarding of public service contracts for domestic passenger services) and Regulation 2016/2337 (this repeals Regulation 1192/67 on the normalisation of the accounts of railway undertakings).

Member States in December 2016 and the deadline for implementation is December 2018. The Government has been giving the approach to implementation significant consideration and it will now be implemented in January 2019. The legislation will also be "sunset" consistent with the Government's focus on looking for opportunities to shape its own domestic rail legislation to meet the needs of passengers and freight shippers.

- 1.9 This will enable the Government to have maximum flexibility to respond to the outcomes of the wide-ranging root and branch Rail Review, where the recommendations will follow a detailed process of close engagement with stakeholders.
- 1.10 In addition to implementation of the Directive, stakeholders were also asked what technical changes the UK would need to make to several pieces of EU rail markets related legislation in the event that the UK exits the EU with no deal.
- 1.11 While we are confident in agreeing a good deal for both sides, as a responsible Government we will continue to prepare for all scenarios, including the outcome that we leave the EU without any deal in March 2019. This legislation will be brought before Parliament to ensure we have a functioning statute book as needed at the point of EU Exit.
- 1.12 This is contingency planning for a scenario that we do not expect to happen, but stakeholders should be reassured that we are taking a responsible approach.

At total of nine written responses to the consultation were received:

Rail industry	7
Public Bodies/Regulators	1
Other	1

2. Executive Summary

- 2.1 After consulting with stakeholders both through the formal consultation process and during informal discussions, the Government is satisfied that the approach outlined during the consultation is the appropriate way to implement the Directive.
- 2.2 Most stakeholders supported our plans for implementation and there was a general consensus that the impact of the Directive would be minimal in GB due to much of the requirements already being standard practice within our rail industry.
- 2.3 Some stakeholders highlighted some concerns about the impact that the Directive may have which we had not perhaps not anticipated at the time of consulting. One main area of concern related to the issue of independence of the infrastructure manager and how this may impact on alliancing and how businesses are structured.
- 2.4 As well as this, some stakeholders also raised objections regarding the optional exclusions allowed under the Directive. Having considered the issues raised, we are satisfied that applying the exclusions is appropriate to ensure that smaller companies are not adversely impacted by the Directive.
- 2.5 Prior to the publication of the consultation, the Department held informal discussions with key stakeholders. These informal discussions helped us to frame the consultation to ensure that all impacts were properly investigated.
- 2.6 Following publication, informal and formal engagement continued which included a working group hosted by the Department. Invites were sent to a wide range of organisations from across the rail industry and those that attended included representatives from Network Rail, the Office of Rail and Road, the Welsh Government, the Northern Irish Executive and the Rail Delivery Group.
- 2.7 Meetings with Department officials were held at the request of individual stakeholders to go through the consultation questions in further detail and gave them an opportunity to raise any issues they felt were particularly important to their organisation.
- 2.8 Engagement has continued following the end of the formal consultation period with a further stakeholder working group held in late July to share the results of the consultation. The Department has also continued a series of informal meetings to discuss the findings of the consultation and to test legislative proposals.
- 2.9 More generally, the Government has been considering the implications of the current EU Exit context and the Government's objectives for EU Exit. After very careful consideration, it believes that it is appropriate to sunset the legislation to provide opportunities to shape domestic rail legislation and allow flexibility to respond to the outcomes of the Rail Review. This will follow a process of close consultation with stakeholders.

2.10 This means that the regulations which implement the Directive will remain on the statute books for a limited period and will cease to apply from 31 December 2020.

Devolved Administrations

2.11 Alongside the engagement with the rail industry, the Department has ensured that the devolved administrations have been consulted, including colleagues from Northern Ireland who will be making their own legislation to implement the Directive.²

2.12 Department officials met with colleagues at Transport Scotland from the Scottish Government to discuss the consultation and the Government's plans to implement the Directive. Colleagues at the Welsh Government were also given the opportunity to discuss the consultation with Department officials.

2.13 Although Transport Scotland did not provide a formal response to the consultation they were satisfied with the proposals and did not raise major concerns about the impacts it may have.

The Consultation

2.14 The consultation was split into two parts with the first part focussing on how the Directive should be implemented while the second concentrated on three EU Exit SIs. This second part asked stakeholders what technical amendments would be required to correct inoperabilities to ensure the legislation worked after EU Exit.

2.15 The consultation was split into themes numbered from 1 to 7. Themes 1 to 5 are mandatory requirements of the Directive whereas themes 6 and 7 are optional and provided flexibility regarding their implementation.

2.16 Prior to consulting, the Government's position was to implement themes 1 to 6 but not to implement theme 7 which focusses on a common information and through ticking scheme. This remains the position following the consultation process.

2.17 Theme 1 introduces independence and impartiality requirements. New Articles 7, 7a, 7b and 7c introduce requirements to ensure the impartiality of the infrastructure manager while still enabling alliancing and joined up working.

2.18 Theme 2 focusses on financial transparency requirements for infrastructure managers while theme 3 relates to coordination and cooperation between railway undertakings and infrastructure managers.

2.19 Theme 4 provides additional powers for regulatory bodies and theme 5 extends the requirements to limit the right of access to railway infrastructure if the economic equilibrium of a franchised operator would be compromised by a proposed service.

2.20 Theme 6 allows certain networks to be exempt from some requirements of the Directive. This introduces new exclusions as well as keeping those included in Directive 2012/34. The Government was minded to introduce the new

² Rail is devolved to the Northern Ireland Executive and the rail network is separate to GB's.

exclusions prior to consulting and requested comments from stakeholders as to what the potential costs and benefits might be if they were implemented.

- 2.21 As mentioned above, theme 7 is an optional requirement to operate common information and through ticketing schemes. The Government's view is that the existing franchising and licensing regime already requires operators to participate in such a scheme so its implementation would not be necessary. There is also the risk that future legislative proposals from the Commission in relation to this may not be compatible with existing schemes in GB.

Next steps

- 2.22 The Department plans to continue with the proposed implementation of the Market Pillar Directive and will lay the legislation before Parliament in January 2019, shortly after the Commission's deadline of 25th December 2018.
- 2.23 The Directive will be implemented and brought into UK law by secondary legislation entitled The Railways (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations 2019 (the Regulations).
- 2.24 This will amend The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the 2016 regulations).
- 2.25 The Regulations will subsequently be amended by The Railways (Access & Management) (Amendment) (EU Exit) Regulations 2019 to prepare the legislation for EU Exit.
- 2.26 In addition to this, two further statutory instruments will be laid in form of Railways (Licensing of Railway Undertakings) (Amendment) (EU Exit) Regulations 2019 and EU Regulation 1370/2007 (Public Service Obligations in Transport) (Amendments) (EU Exit) Regulations 2019.
- 2.27 These regulations will be laid before Parliament early in 2019 under the European Union Withdrawal Act 2018 ahead of the UK exiting the EU in March 2019. By removing inoperabilities, they will ensure that the UK's statute book continues to function after EU Exit.

3. Responses Received

- 3.1 The Department received nine responses, almost exclusively from stakeholders within the rail industry. We also received one response from a member of the public.
- 3.2 The responses were broadly in line with the expectations we had prior to consulting due to the engagement undertaken with stakeholders ahead of publication. The views expressed by stakeholders generally reflected that the Directive will not have a significant impact on rail markets in Great Britain as our rail policies are already closely aligned with its requirements.
- 3.3 Stakeholders were largely in favour of the intentions of the Directive and the government's proposals on how it should be implemented. One response highlighted the importance of fully transposing the Directive into UK law to ensure that the full benefits of opening up access to rail markets could be realised.
- 3.4 The consultation was made up of 15 questions, 14 of which focussed on the implementation of the Market Pillar Directive while one question was in relation to the three EU Exit SIs.
- 3.5 Most stakeholders were unable to provide detailed responses to this final question and requested sight of drafts before they could provide the Department with further comments.
- 3.6 They were, however, satisfied that the proposed changes outlined in the consultation were a logical approach to ensure that rail markets legislation continues to function after the UK has left the EU.

Question 1: Are you considered to be a small or micro business according to the Better Regulation Framework Manual?

- 3.7 Of the responses received none considered themselves to be a small or micro business.

Question 2: We have assessed the approach of not using copy out as being the least burdensome and the least costly to businesses. Do you agree with this assessment? If you do not agree with this assessment please provide evidence on the likely benefits of using a copy out approach to transpose the Directive.

- 3.8 **Consultee response:** There was almost unanimous agreement from stakeholders that this was a logical way to transpose the Directive due to The Railway (Licensing of Railway Undertakings) Regulations 2005 being amended in 2016 to transpose Directive 2012/34/EU (the recast).
- 3.9 It was noted that the 2016 regulations were not implemented using a copy out approach so the consensus was that it was sensible to follow the same process in amending them.
- 3.10 One respondent suggested that the contents of the Directive should be "woven in" to the updated version of the regulations but warned against the risk of legal ambiguity being created as a potential cost to the industry.
- 3.11 This was a regular feature of stakeholder responses and most of them also requested early sight of the draft regulations in order to comment further and to highlight any other issues which might arise.
- 3.12 One stakeholder opposed the proposal not to use copy out and highlighted concerns regarding how previous Directives have been transposed differently into UK and French law. They expressed a view that using the copy out approach provides greater legal certainty and leaves the requirements of the Directive less open to interpretation.
- 3.13 **Government response:** The government welcomes the largely positive response to this plan from the majority of our stakeholders but notes the warning of risk from some in relation to creating possible legal ambiguity.
- 3.14 It is our intention to continue with our proposal not to use copy for the reasons already provided above and within the consultation.

Question 3: Do you agree with our initial assessment that the introducing the new requirements in Theme 1 will have zero impact? If you disagree please give further details including the potential cost to you of implementing the requirements.

- 3.15 Theme 1 of the Directive focusses on new independence and impartiality requirements for infrastructure managers. This covers decisions made in relation to essential functions such as capacity, allocation and infrastructure charging. These requirements apply to all EU Member States which has meant that some have had to make significant changes to the management of their rail networks in order to ensure compliance with the Directive.
- 3.16 **Consultee response:** Generally, responses to the consultation agreed that the new independence and impartiality requirements would have zero impact as the practices are already in place within our rail markets structures.
- 3.17 Many of the responses referred to the practice of alliancing within the rail sector and the need to ensure that these alliance agreements were consistent with the terms of the Directive. Stakeholders commented that they were satisfied that alliancing was allowed under the terms of the Directive but some felt that it would be necessary to explore whether any changes would be required to ensure that there was continued compliance.
- 3.18 One response raised the issue of the outsourcing of the infrastructure manager's functions and highlighted that the industry should not lose any flexibility in terms of the structure of the outsourcing arrangements to ensure maximum benefit and efficiency.
- 3.19 Not all stakeholders agreed with our assertion that the impact of implementing this part of the Directive would be zero, however. One raised concerns that since the Directive had originally been proposed there had been some changes within the UK's rail structures that may lead to difficulties. They highlighted the example of alliancing arrangements becoming deeper in recent years and suggested that the Department provide guidance regarding alliance boards.
- 3.20 The same response also suggested that there might be an issue regarding the reach of Article 7c which focuses on the outsourcing and sharing of the infrastructure manager's functions. They also noted that due to confusion between PRIME's definition of the infrastructure manager's six functions and the "essential functions" as defined by the Directive, operators may find themselves falling foul of rules. To avoid such instances, they recommend that we publish a guidance note alongside the regulations.
- 3.21 Furthermore, this response also highlighted a risk that companies could become excluded from the franchise market if they undertook wider functions on behalf of the infrastructure manager.
- 3.22 Another stakeholder also disagreed that the impact of this part of the Directive was zero. They highlighted changes in their organisation that they had to make to insure legal compliance with the Directive.
- 3.23 **Government response:** Although most stakeholders agreed that this would not have an impact on rail in GB, we now acknowledge that for some stakeholders

that preparing for compliance with the Directive perhaps had a greater impact than we initially anticipated.

- 3.24 As this is a mandatory requirement within the Directive, the government has little flexibility in how this is implemented into UK law. We have however considered the comments raised by stakeholders and have sought to mitigate against the concerns they have raised within the drafting of the regulations.
- 3.25 This part of the Directive outlines the responsibilities that the infrastructure manager has on the rail network. These relate to operation, maintenance and renewal of the network as well as the development of the railway infrastructure in accordance with national law.
- 3.26 In addition to this, the Directive also makes clear the circumstances in which the same individuals cannot be concurrently appointed or employed within structures of an infrastructure manager and railway undertaking.
- 3.27 The Department remains satisfied that these new requirements are consistent with the practices already ongoing within our rail industry. This includes the practice of alliancing and the overarching ambition the Government has to join up track and train. Indeed, Article 7c (4) makes it clear that infrastructure managers may conclude cooperation agreements with one or more railway undertakings in a non-discriminatory way to deliver benefits to customers.

Question 4: Do you agree with our initial assessment that the introducing the new requirements in Theme 2 will have a negligible impact?

If you disagree please give further details including the potential cost to you of implementing the requirements.

- 3.28 Theme 2 introduces new financial transparency requirements for infrastructure managers.
- 3.29 **Consultee response:** This part of the Directive relates to new financial transparency requirements. The consensus of the respondents agreed with our assessment that there would be little impact in implementing the measures as outlined in Article 7d.
- 3.30 One response highlighted that their network license around financial transparency was already aligned with these requirements.
- 3.31 One stakeholder, however, disagreed that the requirements would have a negligible impact and raised the issue of the prohibition on dividend payments in Article 7d (1).
- 3.32 This prevents dividend payments to any company within the same group of companies that exercises control over both the infrastructure manager and the railway undertaking.
- 3.33 They advised that due to their structure, made up of various companies, this may lead to funds potentially becoming "stuck" within one entity of their organisation as they cannot be paid by way of dividend to another of their companies.

- 3.34 **Government response:** We are satisfied to note that a majority of stakeholders agreed with our assessment that this requirement would have limited impact.
- 3.35 We acknowledge, however, that for one stakeholder that responded the impact was more significant than we had anticipated at the time of the consultation being published. Department officials have met with the relevant stakeholder to discuss the issues raised.

Question 5: Do you agree with our initial assessment that introducing the new requirements in Theme 3 will have negligible impact?

If you disagree please give further details including the potential cost to you of implementing the requirements.

- 3.36 Theme 3 brings in new requirements for infrastructure managers and railway undertakings to cooperate on issues such as interoperability and access conditions.
- 3.37 **Consultee response:** The respondents generally felt that there would be a negligible impact in implementing this part of the Directive as the coordination mechanisms outlined are already in place on our rail network. One response highlighted that the Rail Delivery Group and Rail Safety and Standards Board provided a number of forums that carried out the required coordination between infrastructure managers and railway undertakings.
- 3.38 Stakeholders highlighted that while Article 7e states the infrastructure manager should draw up and publish the guidelines for coordination, Network Rail were not always the appropriate body to do so. One response requested guidance from the Department as to how this requirement would be met without creating a further bureaucratic burden for the industry.
- 3.39 It was noted however that such coordination may become more problematic as more infrastructure managers enter the market. One response suggested that where the networks of various infrastructure managers interacted extensively, a cooperation agreement should be drawn up in order to comply with Article 7e and Article 40 of 2012/34/EU.
- 3.40 **Government response:** The government is satisfied that the RDG and the main infrastructure manager, Network Rail, cooperate highly effectively to ensure that the requirements of these coordination mechanisms are met. This has been noted by a majority of consultees.
- 3.41 Whilst it was raised that Network Rail may not always be the appropriate body to publish guidelines for coordination, the Directive is clear that this a role for the infrastructure manager to undertake so this is reflected in the Regulations. Network Rail were given the opportunity to review a draft of the Regulations and provided the Department with suggestions that would allay their concerns.
- 3.42 We note the concerns regarding the networks of various infrastructure managers crossing paths with each other and will be working with those

involved to ensure that the rights of passengers are not impacted and that coordination is agreed.

Question 6: Do you agree with our initial assessment that introducing the new requirements in Theme 4 will have a negligible impact on regulatory bodies?

If you disagree please give further details including the potential cost to you of implementing the requirements.

- 3.43 This theme relates to additional powers for regulatory bodies and introduces new requirements in relation to access, appeals and audits.
- 3.44 **Consultee response:** The responses we received to this consultation were unanimous in agreeing that there would be minimal impact on our regulator, the Office of Rail and Road, as they already carry out the functions as outlined in the Directive.
- 3.45 The ORR, in their response, highlighted that their powers were already "sufficiently broad" to cover the new matters raised within the Directive, namely traffic management, planning and maintenance issues and compliance with independence and impartiality requirements.
- 3.46 **Government response:** We are pleased to note that our stakeholders agree that the impact of these requirements will be negligible due to the powers that the ORR already have within their existing regulatory framework.
- 3.47 The UK has long been ahead of the rest of the Europe in rail regulation and this example highlights how this Directive sees EU Member States being brought into line with practices that have been well established on our network for many years.

Question 7: What is the impact, if any, on the regulator of providing further information to intended passenger services providers on ensuring the economic equilibrium of a franchise operator is not compromised?

- 3.48 This element of the Directive extends access rights to all rail passenger services unless the economic equilibrium of a franchised operator would be compromised by the proposed service.
- 3.49 **Consultee response:** At the time of consulting, the implementing act in respect of the Economic Equilibrium Test had yet to be finalised. Respondents therefore had difficulty in responding to this section of the consultation fully and some referred to this issue.
- 3.50 The responses that were received however noted that they felt that there should not be a separate test for high speed services and one commented that they

had requested clarity from the Commission on this which had not been forthcoming.

- 3.51 Aside from that issue, the respondents were satisfied with the proposed test as it largely aligns with the Not Primarily Abstractive Test that is already in operation by the ORR. Some stakeholders requested clarification as to whether the NPAT would operate alongside the EET or be replaced by it.
- 3.52 **Government response:** We note that stakeholders were unable to give a full answer at the time of the consultation due to its timing. Throughout the negotiation process of the Economic Equilibrium Test we managed to secure changes that we felt brought the proposed test more into line with practice on our rail network.
- 3.53 The eventual implementing act was agreed in September 2018 and the Commission, after successful negotiation by the Department and those from other Member States, removed the requirement for a separate test for high speed rail. We are therefore satisfied that we have managed to negotiate the Commission to a position that our stakeholders are supportive of and broadly reflects current practice.
- 3.54 Unlike many Member States, our rail network has successfully operated open access services for many years and we are therefore satisfied that this requirement will have a limited impact on our rail network.

Question 8: Do you agree that we should extend the exclusions from the independence, financial transparency and outsourcing requirements to the services described above?

- 3.55 This optional requirement allows for certain networks to be excluded from requirements within the Directive. These requirements relate to independence of the essential functions of an infrastructure manager, financing of the infrastructure manager and conditions of access to services.
- 3.56 Local and regional standalone networks for passenger services, networks intended for the operation of urban or suburban passenger services, regional networks used for regional freight services and privately owned infrastructure that exists only for its own freight operations
- 3.57 **Consultee response:** Of the stakeholders that responded to this question, all were satisfied with the government's intentions to extend the above exclusions. It was noted that this was an appropriate action to keep the policy in line with the 2016 Regulations.
- 3.58 **Government response:** We welcome the support of our stakeholders on this aspect of the policy and are satisfied that by keeping the exclusions of the 2016 Regulations in place there will be not be any negative impact on stakeholders in implementing the Directive.

Question 9: What is the impact, including costs or benefits, of extending the exclusion?

- 3.59 **Consultee response:** Only one response commented significantly on this. They stated that by extending the exclusions it ensures that statutory requirements for urban and suburban operations do not increase.
- 3.60 **Government response:** The government is keen to keep costs and regulatory burdens on business down where possible and welcome the comments in support of our proposals to extend the exclusions.

Question 10: Do you agree that we should exclude the above services from the requirements in the Directive?

- 3.61 This aspect of the Directive allows Member States to exclude further services from the requirements of contained within themes 1 and 2 of the Directive.
- 3.62 These include local low traffic lines not exceeding 100km that are used for freight by a single freight operator, that are not managed by an infrastructure manager and where the essential functions in relation to the line is carried out by a body not controlled by a railway undertaking. This exemption can also be applied to lines for local passenger services.
- 3.63 The other exclusion relates to regional low traffic networks managed by an entity other than the main infrastructure manager and used for the operation of regional passenger services provided by a single railway undertaking other than the incumbent railway undertaking. This exemption can also be applied to regional lines used for freight services.
- 3.64 **Consultee response:** We received a mix of responses to this question and it was therefore difficult to establish a consensus amongst our stakeholders.
- 3.65 One respondent felt that there was little point in excluding these services from the requirements of the Directive as they were concerned that too many exemptions may limit the growth of the market in EU Member States with less open markets than in GB. As we already have an open and liberalised market this response noted that extending these requirements without a defined purpose may lead to a broader policy discussion.
- 3.66 Another response raised a concern that without a clearly identified purpose for excluding these services there was a risk that it could lead to policy and regulatory changes. Their reply therefore requested clarification from the Department regarding the rationale for these exclusions.
- 3.67 Two stakeholders agreed with excluding these services from the requirements of the Directive. One of these responses highlighted a belief that small scale services separate from mainline services had different requirements so their circumstances should be considered on a case by case basis.
- 3.68 **Government response:** It is noted that there was not overall agreement amongst our stakeholders regarding this question and that perhaps the

rationale for excluding these services from the requirements was not clearly explained within the consultation document.

- 3.69 However, the Department is satisfied that some smaller companies may be brought into the scope of the Directive if these exclusions were not introduced. Such organisations are not likely to be equipped to comply with the Directive and it is not the intention of the Directive to increase burdens on such organisations.
- 3.70 It is therefore logical for the government to take advantage of these exclusions to limit the impact the Directive has on smaller businesses within our rail markets.

Question 11: Do you think you would take advantage of the exclusions and if so what would be the benefits to you of doing so?

- 3.71 **Consultee response:** None of the consultation responses provided a substantial answer to this question as they were not covered by this exemption and therefore could not provide any detail regarding its potential benefits.
- 3.72 **Government response:** Although we were unable to fully analysis the costs and benefits of extending the exclusions, we are satisfied that this remains the appropriate option. As discussed above, this is due to the potential impact that the requirements of the Directive may have on smaller organisations that may not be able to comply with the requirements of the Directive. It is also long-standing Government policy to take advantage of exclusions when implementing EU Directives where possible.

Question 12: Do you agree that we should not implement the new requirements detailed in Theme 7?

- 3.73 Theme 7 is an optional requirement to introduce common information and through ticketing schemes.
- 3.74 **Consultee response:** There was broadly agreement with our initial position not to implement these requirements.
- 3.75 Stakeholders commented that this was already in operation in Great Britain and therefore could be addressed through licencing and franchising regimes. There was also agreement that with our view in the consultation document that implementing this part of the Directive may lead to a risk that future legislative proposals from the Commission would not be compatible with our existing schemes.
- 3.76 Two responses noted that the requirements in Article 13a(3) relating to the coordination of contingency plans between railway undertakings in the event of major disruption were not optional. However, they both felt that this would not

have an impact on our railways as the National Conditions of Carriage already fulfilled the functions as outlined in the Directive.

- 3.77 One stakeholder disagreed with the general consensus and felt that the requirements should be implemented. They suggested that the current arrangements were not "tailored to benefit passengers" as stated in the consultation document and that implementing this part of the Directive would remove current deficiencies.
- 3.78 This response also expressed a view that the current Ticketing and Settlement Agreement was harmful to passengers as they currently did not have access to all fares, the "fares island" created by TfL in London lead to pre-booked tickets being more expensive than Pay As You Go and ticket retailers have limited access to data compared to Train Operator Companies.
- 3.79 **Government response:** We are satisfied that the requirements outlined in the Directive should not be implemented into the regulations and welcome the support from the majority of stakeholders on this. We will therefore not be implementing this requirement.

Question 13: If you disagree, what are the benefits of introducing the requirements in the Directive?

- 3.80 **Consultee response:** The above stakeholder were understandably the only ones who responded to this question. As detailed above they stated that they felt the current arrangements had some deficiencies and that by implementing this part of the Directive steps could be taken to resolve them.
- 3.81 **Government response:** The stakeholder who raised their concerns at the current arrangements discussed them in a stakeholder working group after the consultation period. They agreed to raise the issue with the Department's Rail Fares and Ticketing Policy team to discuss whether changes could be made.

Question 14: Are there any areas which we have not covered where you believe there will be either positive or negative impacts?

If so please give further detail.

- 3.82 **Consultee response:** Stakeholders did not suggest any further areas to be covered by the consultation so therefore made no further comments about positive or negative impacts of the Directive.
- 3.83 However, there was almost unanimous agreement amongst those that responded that they wished to see drafts of the proposed statutory instrument that would implement the Directive.

3.84 **Government response:** We have continued our engagement with industry following the end of the formal consultation process. We were therefore able to share drafts of the proposed regulations and consider their comments before finalising the legislation.

Question 15: What are the main technical inoperabilities that we will need to address in these EU Exit SIs?

3.85 **Consultee response:** Stakeholders welcomed the opportunity to comment on the three EU Exit SIs included within this consultation; although it must be noted that only four responses commented substantially on this question.

3.86 The responses generally agreed with our approach to correcting inoperabilities by removing reference to EU terms such as "Member State" and "the Commission".

3.87 One response commented that where changes would be made in relation to areas that were previously overseen by EU bodies that to "keep costs down and to give greater certainty" existing UK bodies should be given the role rather than creating new organisations.

3.88 A number of responses noted that it was difficult to comment on the technical inoperabilities due to not having sight of the relevant statutory instrument drafts.

3.89 Due to the lack of drafting some also suggested that there should be a further consultation period once we were able to share this. One stakeholder stated that they felt this would provide strategic oversight and help the industry understand where each piece of European legislation fits into the Department's plans.

3.90 **Government response:** We have acknowledged the concerns raised by stakeholders in relation to the lack of SIs drafts that we have been able to share with them.

3.91 Due to the tight timescales that are involved to ensure that the UK statute book continues to function after EU Exit in March 2019, we will not be formally consulting further on these SIs. We have, however, continued to engage with our stakeholders and kept them informed on the progress we have made in relation to EU Exit legislation.

4. Conclusion

- 4.1 Taking into account the impact assessment made prior to the publication of the consultation and subsequent responses received from stakeholders, the Department remains confident that the Directive will have a limited impact on our rail markets although it is noted that some organisations have had to make changes to their structures to ensure that they comply.
- 4.2 We therefore plan to implement the Directive as outlined in the consultation document and will lay The Railways (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations 2019 before Parliament in January 2019 to achieve this.
- 4.3 After careful consideration of the approach to take, the Government has taken the decision to sunset the legislation. The Directive will be implemented into domestic law in January 2019. Sunsetting will enable the Government to have more scope to adapt to any outcomes of the Rail Review, following close engagement with stakeholders.
- 4.4 This decision is consistent with the Government's focus on looking for the potential to shape domestic rail legislation to meet the needs of business and passengers. As the legislation is being sunset, it will remain in place until December 2020.
- 4.5 We are hugely grateful for the expertise of our stakeholders and the responses they provided as part of this consultation process. They raised a wide range of issues related to the Directive and UK rail markets legislation and these have been considered in the drafting of the regulations.
- 4.6 By having ongoing and regular engagement with our stakeholders following the consultation period, we have been able to mitigate against the risks they had raised by sharing drafts of the regulations and allowing them to offer their insights on the issues they raised.
- 4.7 In relation to the EU Exit statutory instruments, stakeholders commented that the lack of information provided made it difficult for them to comment constructively on the planned amendments that need to be made. Following the consultation, engagement has continued with key stakeholders in respect of EU Exit and the legislative process required to correct the statute book in preparation for EU Exit.

5. List of responding organisations

Arriva

Associated Society of Locomotive Engineers and Firemen (ASLEF)

Eurotunnel

Network Rail

Office of Rail and Road

Rail Delivery Group

Trainline

Transport for London

One member of the public