Department for Transport

The Railways (Interoperability) Regulations 2010

(Transposition of Directive 2008/57/EC on the interoperability of the rail system within the European Community)

Impact Assessment

Summary: Intervention & Options		
Government /Agency: Transport	Title: The Railways (Interoperability) Regulations 2010 (Impact Assessment of options for transposition of EC Directive 2008/57/EC on the interoperability of the European Community rail system)	
Stage: Main Consultation	**Version: 1.0**	**Date: 22/02/2010**
Related Material: The Railways (Interoperability) Regulations 2006 (http://www.opsi.gov.uk/si/si2006/20060397.htm); **Consultation on transposition of Directive 2008/57/EC – initial policy proposals (http://www.dft.gov.uk/consultations/closed/interoperability)**		

Available to view at: http://www.dft.gov.uk/consultations

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What is the problem under consideration? Why is government intervention necessary?

The Government is required to transpose the requirements of EU Directive 2008/57/EC (recast) ("the new Directive") on the interoperability of the rail system within the EU into UK domestic legislation by no later than 19 July 2010. The new Directive merges the existing Directives under which the EU's railway interoperability regime was introduced and provides for the use of harmonised technical standards and a common European assessment and authorisation process for placing new rail developments or major upgrades and renewals of the existing railway into service. It also establishes the procedures for the placing in service of interoperability constituents and subsystems, the conditions for vehicles to enter the market and the requirement for vehicle and infrastructure registers.

What are the policy objectives and the intended effects?

The proposed draft Regulations contribute to the further development of the interoperability of the EU rail system and the progressive creation of the internal European market in equipment and services for the construction, renewal, upgrading and operation of the rail system within the EU.

In transposing the new Directive's requirements, the Government wishes to ensure that its provisions are transposed, wherever possible, in a cost effective manner that is appropriate and sympathetic to the needs and circumstances of the UK and helps to simplify the existing regulatory framework.

What policy options have been considered? Justify any preferred option.

The following three policy options have been considered with regard to transposition of the new Directive into UK domestic legislation:

Option 1 – Do nothing

Option 2 - Transpose the provisions of the new Directive, with minimum amendments to the existing Regulations ("RIR 2006") and regulatory framework

Option 3 - Transpose the provisions of the new Directive and amend various further elements of RIR 2006

The Government is proposing to choose option 3 and take advantage of the opportunity presented by the new Directive to consider further amendments to RIR 2006 in light of experience of operating under the current interoperability regime. The proposed draft Regulations presented in this consultation therefore would revoke RIR 2006 (as amended) and replace the current provisions with a new consolidated set of Regulations.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Five years after the coming into force of the Regulations.

Additionally, on 19 July 2011 and thereafter every three years, the European Commission shall report to the European Parliament and the Council on the progress made towards achieving interoperability of the rail system. The Government will submit these reports to the UK Parliament along with an accompanying Explanatory Memorandum.

Ministerial sign-off For consultation stage Impact Assessments:

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: **Chris Mole** Date: **22/02/2010**

Summary: Analysis & Evidence	
Policy Option: 3	**Description: Transpose the provisions of the new Directive and amend various further elements of RIR 2006**

Annual Costs	Description and scale of **key monetised costs** by 'main affected groups'
One-off **Y**	The proposed draft Regulations may lead to the creation and transfer of responsibility to existing or new bodies. These may create additional set-up, transitional and on-going costs.
£ Unquantifiable	At this stage, we do not have sufficient information to quantify the costs associated with implementing the Directive. We do not consider that the revisions to the current regulatory framework, as a package, will result in any significant additional costs for the industry.
Ave Annual Cost (excluding one-off)	**Total Cost** (PV) **£ Unquantifiable**
£ Unquantifiable	
Other **key non-monetised costs** by 'main affected groups'	

Annual Benefits	Description and scale of **key monetised benefits** by 'main affected groups'
One-off **Y**	The proposed draft Regulations are expected to streamline and add greater clarity and certainty to the application of interoperability in the UK. There is currently insufficient information, which we will seek to obtain through the consultation process, to monetise these benefits.
£ Unquantifiable	
Ave Annual Benefit (excluding one-off)	**Total Benefit** (PV) **£ Unquantifiable**
£ Unquantifiable	
Other **key non-monetised benefits** by 'main affected groups'	

Key Assumptions/Sensitivities/Risks			
Price Base Year	Time Period Years	**Net Benefit Range** (NPV) **£ Unquantifiable**	**Net Benefit** (NPV Best estimate) **£ Unquantifiable**

What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	19 July 2010
Which organisation(s) will enforce the policy?	ORR & HSE NI

What is the total annual cost of enforcement for these organisations?			£ Not yet known	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)

Increase of £ Decrease £ **Net impact £**

Key **Annual costs and** **(Net)**

Evidence Base

Contents

1 Introduction/Background

1.1 Interoperability is a European initiative aimed at improving the competitive position of the rail sector so that it can compete effectively with other transport modes, in particular with road transport. The objective of interoperability is to create a harmonised European railway system that allows for the safe and uninterrupted movement of trains and specifically to:

- ensure compatibility between European railways to allow for through running of trains between Member States;
- harmonise Member State design assessment, acceptance and approval processes to prevent barriers to trade and promote a single European market for railway products and services; and,
- deliver benefits of standardisation through economies of scale for railway components, improving the economic performance of European railways and the environmental performance of the whole European transport system.

1.2 The European Commission ("the Commission") introduced its first Directive (the “High Speed Directive”) on railway interoperability in 1996 (Council Directive 96/48/EC), requiring European Member States to use harmonised Technical Specifications for Interoperability ("TSIs") as the set of standards to build and renew the Trans European Network ("TEN") for ‘High Speed’ railways. This was followed by a further Directive (the “Conventional Directive”) in 2001 (2001/16/EC), applying the same principle to key ‘Conventional’ railway networks that form part of the TEN, including those used for freight operations. These Directives (including subsequent amendments) were transposed into UK law through the Railways (Interoperability) Regulations 2006 (“RIR"), as amended.

1.3 The Commission has introduced a new Directive (2008/57/EC) ("the new Directive") to contribute to the further development of the interoperability of the EU rail system and the progressive creation of the internal market in equipment and services for the construction, renewal, upgrading and operation of the rail system within the EU. The new Directive harmonises and simplifies the existing Directives under which the EU railway interoperability regime was introduced and provides for the use of harmonised technical standards and a common European assessment and authorisation process for placing new rail developments or major upgrades and renewals of the existing railway into service. It also establishes the procedures for placing into service of interoperability constituents and subsystems, the conditions for vehicles to enter the market and the requirement for vehicle and infrastructure registers.

1.4 The Government is required to transpose the new Directive into UK law by no later than 19 July 2010. Member States are obliged to implement Directives in full and, if necessary, the Commission can force individual Member States to comply (through infraction proceedings and, ultimately, the imposition of fines).

1.5 Since the new Directive introduces a number of revisions and new processes to the interoperability regime which will necessitate significant changes to RIR 2006, it has been decided to revoke and replace these with new regulations, "RIR 2010", to aid clarity and understanding. It should be noted that many of the provisions of RIR 2006 (as amended) have been reproduced in the proposed draft Regulations without substantive amendment except to harmonise and simplify the original provisions where possible.

1.6 This Impact Assessment refers to a number of bodies which for clarity are defined below:

Competent Authority: The organisation with the legally delegated or invested authority, capacity or power to perform a designated function. In the case of these draft Regulations, it means the body responsible for certain specified activities to secure the effective implementation of interoperability in accordance with the European Directives. The draft Regulations propose perpetuating the current arrangements whereby the Competent Authority in Great Britain is the Department for Transport , in Northern Ireland it is the Department for Regional Development Northern Ireland (DRDNI) and for the Channel Tunnel system it is the Intergovernmental Commission (IGC).

National Safety Authority: The body required by the Regulations to authorise new, renewed or upgraded infrastructure and rolling stock as being fit to be placed into service. For Great Britain this is the Office of Rail Regulation (ORR); in Northern Ireland it is DRDNI and for the Channel Tunnel system it is the IGC.

Enforcing Authority: This is the body that has the relevant legal powers to enforce the Regulations under health and safety law. For Great Britain and the Channel Tunnel system this is the ORR and in Northern Ireland it is the Health and Safety Executive NI (HSENI).

2 Preparation of this Impact Assessment

2.1 This consultation impact assessment has been prepared alongside the development of the proposed draft Regulations which have been drafted to transpose the requirements of the new Directive. An Impact Assessment was undertaken for RIR 2006 which is still relevant as many of the elements of these Regulations have been reproduced in the proposed draft Regulations. This impact assessment therefore only considers the new requirements which RIR 2010 introduces. There are also significant changes proposed for the current framework covering Implementation Plans, the Notified Body (NoBo) market and enforcement of the Regulations.

2.2 The scope of RIR 2010 is the whole of the United Kingdom: England, Scotland, Wales, Northern Ireland and the British half of the Channel Tunnel. It has been prepared on the basis of scoping work involving both informal and formal consultation with a number of key stakeholders and a review of the existing framework.

2.3 Discussions, informal consultation and stakeholder workshops led to the development of an initial policy proposals consultation that was held between March to May 2009 (a summary of the responses received have been published on the Department for Transport's website[1]). The consultation outlined the options available for transposing the new Directive and noted the Government's preferences. It requested stakeholders to consider providing an estimate of the costs and benefits that each of the options presented might represent.

2.4 Responses to the consultation[2], which have been explored further with individual stakeholders and through additional workshops, have informed the development of the draft Railways (Interoperability) Regulations 2010. However, no costs were forthcoming and it has therefore proved very difficult to obtain accurate figures for the new provisions of RIR 2010. It should be noted that, in line with the Commission's objectives for the new Directive, many of the revisions are designed to provide monetary benefits, efficiency benefits or other benefits to the industry.

2.5 At this stage we do not consider that the revisions to the current regulatory framework, as a package, will result in any significant additional costs for the industry. The Government will, however, take account of any new

[1] www.dft.gov.uk/consultations/closed/interoperability

[2] http://www.dft.gov.uk/consultations/closed/interoperability/response.pdf

information which is provided following consultation on the proposed draft Regulations and review its position before publishing a final impact assessment accordingly. The regulatory framework will also be kept under review and its implementation, and any costs and/or benefits, will be closely monitored.

3 Policy Proposals

3.1 Transposition of the new Directive

3.1.1 In considering how to proceed with the transposition of the new Directive into UK domestic legislation, the Government has considered three implementation options:

Option 1) Do nothing

3.1.2 Member States are obliged, by EU law, to implement all Directives in full into domestic legislation. In accordance with Article 38 of the new Directive, the UK must transpose the requirements of the new Directive by no later than 19 July 2010. Doing nothing would leave the UK at risk of infraction proceedings and the prospect of substantial fines. To 'do nothing' is therefore not considered to be a viable option.

Option 2) Transpose the provisions of the new Directive (with minimum amendments to the existing Regulations and framework)

3.1.3 This option would provide for the introduction of amending regulations, under section 2(2) of the European Communities Act 1972, to revise RIR 2006 and introduce only the new requirements of the new Directive. RIR 2006 has already been amended twice and, since some of the changes introduced by the new Directive are fairly substantial, producing a third set of amendment Regulations is not considered to provide the necessary clarity and transparency required by the interoperability regime. In addition, feedback received indicated that stakeholders were not supportive of a minimal transposition.

Option 3) Transpose the provisions of the new Directive and amend various further elements of RIR 2006

3.1.4 This option takes advantage of the opportunity presented by the new Directive to consider further amendments to RIR 2006 in light of experience of operating under the current interoperability regime. It would allow the removal of other real and perceived barriers to implementation, such as the current misunderstanding of the regulatory framework by stakeholders and a lack of clearly enforceable requirements. Further amendments to RIR 2006 are also necessary to recognise the introduction of other, related, European legislation, such as Decision 2007/756/EC on the adoption of a common specification for a National Vehicle Register. Their inclusion into this process would enable stakeholders to understand the new measures in context and present the Government's vision for interoperability going forward in a joined-up manner.

Proposed option

3.1.5 The first option is not a realistic option and was not considered further while the second option does not take full advantage of the opportunity to streamline our Regulations and provide maximum benefit for the rail industry. The Government is of the view that option 3) represents the appropriate way forward for transposition and will provide for a more effective and flexible regime than currently is the case. The proposed draft RIR 2010 presented in this consultation therefore would revoke RIR 2006 (as amended) and replace the current provisions with a new consolidated set of Regulations.

3.2 Scope

3.2.1 The new Directive allows Member States some flexibility in determining the scope of application of interoperability. Whilst it notes, at Article 1(4), the Commission's intention to progressively extend the scope of Technical Specifications for Interoperability (TSIs) to the whole rail system, it also provides a mechanism to allow individual Member States to exclude certain categories of rail system in their territories, for example metro, tram and light rail systems, from scope.

Option 1) Bring all systems within scope

3.2.2 This option would make no use of the exclusions provided for under Article 1(3) of the new Directive and would therefore result in all rail systems within the UK being brought within scope of the interoperability regime including, for example, underground and tram systems. Whilst the European Commission has clearly stated its intention to extend interoperability to the whole of the railway system, the current TSIs are currently written in a way that makes them appropriate for application to the heavy rail system but not for light rail/metro systems. The Government believes that the application of the current interoperability regime to the whole rail system could place an unnecessary legislative and administrative burden on small operators, such as a heritage and tourist railways, along with what could be significant associated costs for no apparent pan-European benefit. This option could also bring into scope all privately owned infrastructure which is not subject to open access arrangements.

Option 2) Exclude all systems by category

3.2.4 Due to the nature of the exclusion ‘categories’ provided for by Article 1(3), in almost all cases, the systems which would be excluded (e.g. light rail) are stand-alone with little or no interaction with the mainline railway system. The light rail industry in Europe is a relatively small market compared to heavy rail.

In order to achieve economies of scale from being able to use cheaper standardised components rather than more costly bespoke ones, this sector of the industry is already working towards greater harmonisation and standardisation across Europe. Hence, light rail manufacturers and operators are already moving towards standardisation and applying the Directive's provisions to this sector may impose an unnecessary regulatory burden. Since the adoption of the new Directive the European Commission has written to Member States asking them to exclude light rail systems from national implementation measures.

3.2.5 The Government, however, believes that only citing those categories provided for by Article 1(3), rather than specific systems (such as London Underground, which operates on shared infrastructure with the mainline rail system in several places) could create uncertainty over whether individual systems, or parts of systems, were within scope. This option could entail Contracting Entities having to seek legal advice on whether their projects actually fell within a category and whether it was in scope or not.

Option 3) Exclude some categories of system from scope

3.2.6 While this option is more limited than option 2) and therefore would help provide greater clarity as to whether or not a particular system is within scope it could nevertheless create potential confusion for those categories which remain within scope. Pursuit of this option would be a blunt instrument which took no account of the peculiarities of individual rail systems and would not be sufficiently flexible to allow for the application of interoperability to otherwise excluded systems where this may be desirable. The one exception to this is the category covering privately owned infrastructure and vehicles exclusively used on that infrastructure by the owner for its own freight operations, where the argument for exclusion is clear.

Option 4) Exclude specific rail systems from scope

3.2.7 This option would provide clarity and transparency on which systems are, and are not, excluded from scope. It would involve the creation of a list, to be published by the Secretary of State (for Northern Ireland this would be by the Department for Regional Development Northern Ireland 'DRDNI'), of those specific rail systems which are excluded. This will place a new on-going administrative burden on the Department for Transport for Great Britain/ DRDNI but one that can be borne without too heavy an impact. Applicants can request that a specific rail system, rail network, individual rail line and/or infrastructure, rail vehicles rail operation and rail service be added to the list as long as they conform to one of the categories provided for by the new Directive. The list would be amended by the Secretary of State/ DRDNI, and if appropriate, subject to consultation, to include new systems in future if necessary.

Proposed option

3.2.8 Following a review of the responses received to the Government's initial consultation on transposition, the Government is proposing to choose option 4) and produce an Approved List of exclusions, maintained by the Secretary of State/ DRDNI, and published on the Department for Transport's/ DRDNI's website. In addition, the exclusion provided for under Article 1(3)(c) of the new Directive, namely privately owned infrastructure and vehicles exclusively used on that infrastructure that exist solely for use by the owner for its freight operations, is also proposed to be included in the Regulations in the form of a blanket exemption.

3.3 Subsystem upgrades and renewals

3.3.1 Whenever any existing subsystem is to be renewed or upgraded (i.e., involving 'major' work), the parts of the subsystem being changed should be considered for compliance with TSIs, as part of a gradual transition to a standardised railway.

3.3.2 However, the new Directive (as per the previous Interoperability Directives) does not define 'major'. RIR 2006 effectively leaves it to the Contracting Entity to judge whether its project is major. The Government recognises that it is difficult for Contracting Entities to assess this. We have therefore sought to revise the current framework to clarify both when upgrades or renewals are "major" and when projects or types of project will be required to comply with the relevant TSIs.

Option 1) Contracting Entity judges whether an upgrade or renewal is 'major'

3.3.3 This option would perpetuate current practice under RIR 2006 whereby the Contracting Entity judges whether the renewal or upgrade it is undertaking constitutes major work. If its judgement is wrong it will be breaching the Regulations.

Option 2) Case-by case "screening" decisions by Competent Authority

3.3.4 This option would require Contracting Entities, when planning to undertake almost any upgrade or renewal project, to write to the relevant Competent Authority for a decision as to whether the scope of the proposed work was 'major'. Essentially, this option would be a return to the regulatory framework of the Railways (Interoperability) High-Speed Regulations 2002

which provided a mechanism for screening decisions. When the Government was developing proposals for what became RIR 2006 the feedback from stakeholders was that the screening decision process was unduly burdensome, even for the much more limited scope of RIR 2002 (covering High-Speed TEN railways only).

3.3.5 This option would entail significant administrative burdens, both on the Competent Authorities which, in light of the proposed extension of interoperability to the whole railway system, would be faced with an ever increasing number of screening decisions, and to Contracting Entities which would encounter the costs of making applications and the possible delays to their projects while awaiting a determination. This option appears to offer an ad-hoc and reactive approach that does not link up to either Government or rail industry planning processes and would not provide a Better Regulation approach.

Option 3) TSI Implementation Plans

3.3.6 This option proposes the introduction of published "Implementation Plans" ("Plans") for each TSI. These Plans would support the rail industry's planning process for the development of the railway in the UK and allow for a more transparent and strategic overview of the implementation of interoperability within the UK. Plans would specifically list projects and types of projects that are considered to be upgrades to or renewals of the existing UK railway system and avoid the significant drawbacks associated with option 1) by providing clarity on when a renewal or upgrade project is brought into scope of the Regulations.

3.3.7 This option would entail costs in terms of the administrative requirements involved in developing and drafting Plans and appropriate governance arrangements and change mechanisms would need to be put into place to oversee their implementation. However, the Government believes that these costs are more than offset by the considerable benefits of transparency, certainty and clarity which the Plans will give to the industry. In addition, feedback to the Government's initial policy proposals consultation showed that there was unanimous support from industry to this approach.

Proposed option

3.3.8 The Government proposes to choose Option 3) utilising TSI Implementation Plans which will provide transparency for Contracting Entities about whether or not their projects are within scope. This approach is widely supported by stakeholders and the Government believes that Plans are the most effective method of securing the migration of the UK railway towards interoperability.

3.4 Authorisation – dealing with future extension of TSI scope

3.4.1 The Commission has stated explicitly, in Article 1(4) of the new Directive, its intention that the scope and application of TSIs should eventually extend to the whole of the railway network. This will occur through the gradual revision and geographical extension of current TSIs and the creation of new TSIs, extending technical scope. However, RIR 2006 only provided for interoperability to apply to the Trans European Network (TEN). RIR 2010 therefore needs to include a legal mechanism to facilitate this eventual extension of scope. The Government has considered two options.

Option 1) Limit scope of authorisation to the current scope of TSIs, (amending the Regulations each time the scope of a TSI is extended)

3.4.2 This option reflects the fact that the current TSIs are only mandatory for application to the TEN and it does not take into account the impact on authorisation for future projects which may come within the scope of a TSI due to a future scope extension. This option would require changes to the Regulations every time there was a TSI scope change and that would impose significant administrative burdens and associated additional costs on Government and the industry.

Option 2) Make future provision for TSI scope extension

3.4.3 This option would see the application of RIR 2010 to the rail system in the UK, where the term 'rail system' is defined as meaning the current scope of the new Directive. This term has a much wider geographic scope than the scope of the earlier Interoperability Directives which were limited to the High Speed and Conventional Trans European Networks (TENs). Thus, this option would apply the scope of application to include the TENs as opposed to being explicitly defined and limited by the current TENs.

Proposed option

3.4.4 The Government proposes to choose Option 2) and to make provision in RIR 2010 for future extension of TSI scope by removing the restriction of application to the TENs. This appears to be the most pragmatic approach and reduces the need for changes to the Regulations. Any costs associated with the extension of scope of TSIs is safeguarded by the new Directive, which requires the European Railway Agency (which develops TSIs) to subject proposed extension in scope to a Cost Benefit Analysis.

3.5 Authorisation for sub-systems outside of TSI scope

3.5.1 The Government recognises that there will be projects, particularly infrastructure projects, that fall off the TEN and therefore outside the current scope of TSIs, which for commercial reasons may see benefit in applying the interoperability regime in advance of the extension of scope of TSIs. RIR 2006 does not allow for a formal authorisation process for projects which fall outside of the scope of TSIs. We have therefore sought to revise the current framework to address this issue.

Option 1) No authorisation outside of TSI scope, (but voluntary application of standards)

3.5.2 This option would reflect the current position under RIR 2006 in that a Contracting Entity, even if it voluntarily applies TSI standards to its project, cannot then apply for authorisation under the interoperability regime if it is out of scope. When a project is partially in and partially out of geographic scope this option could incur costs associated with parallel systems for placing into service, without realising the benefit of formal recognition of TSI compliance. This could be seen as a strong disincentive to industry to embrace interoperability. It also does nothing to encourage the adoption of interoperable standards beyond the current scope boundary.

Option 2) Mandatory authorisation for subsystems everywhere irrespective of TSI scope

3.5.3 This option is not required by the Directive, which only currently requires the full authorisation process for subsystems that will be placed into service on the TEN. This option would impose the costs of the interoperability authorisation process, including the verification of TSIs, on all projects regardless of whether they will ever fall within scope of (future) TSIs. As such this option could impose an arbitrary cost for no obvious benefit and therefore this option has been rejected.

Option 3) Voluntary authorisation for subsystems outside of TSI scope (including mixed scope)

3.5.4 This option would leave the decision to the Contracting Entity as to whether to voluntarily apply for authorisation for their project where it currently falls outside the current scope of the interoperability regime (i.e. off the TEN). This would allow a Contracting Entity, where it sees commercial benefit in applying TSIs, to apply for authorisation for placing into service. This option would help address the current problem faced by Contracting Entities whose projects cross the TSI scope boundary as it would allow for the application of one authorisation process to the whole project. This option could introduce administrative burdens for the National Safety Authority ("NSA") if the voluntary

approach is used for projects that are entirely off scope, however, these costs should be manageable, are likely to be foreseeable (assuming the TSI Implementation Plan approach is used) and in the worst case, would be comparable to statutory approvals processes in previous railway safety legislation.

Proposed Option

3.5.5 The Government proposes to choose Option 3), allowing Contracting Entities that have projects which fall outside of TSI scope the possibility of voluntarily deciding whether to apply for the authorisation of a sub-system. This option allows for the recognition of TSI conforming projects that are currently outside TSI scope. Furthermore, by allowing the Contracting Entity to make this decision on a commercial basis, authorisation will only be applied if they decide that there are clear benefits for doing so. The Government wishes to encourage this as it could enable a faster uptake of interoperability across the whole UK network than would otherwise be the case. Progressive, targeted implementation could reduce costs as the European standardised network expands.

3.6 Authorisation stipulating restrictions and limitations

3.6.1 Under the current framework, when a NSA provides authorisation for a vehicle subsystem to be placed into service, there is no provision for the NSA to make any stipulations. The new Directive gives the NSA the discretion to include conditions for vehicle subsystem authorisations. These might include, for example, restrictions or limitations on the use of a subsystem and/or requirements that must be met by a time specified in the authorisation.

Option 1) No stipulations

3.6.2 This option reflects the current position under RIR 2006 whereby authorisation is given by the NSA without any stipulations on use. However, it is not consistent with the new Directive which allows stipulations for rail vehicles and therefore this option has been rejected.

Option 2) Stipulations for the rolling stock sub-system only

3.6.3 This option is the most closely aligned with the new Directive's provisions in that it explicitly allows the NSA to stipulate restrictions and limitations on authorisations for rolling stock subsystems only. While there is an argument that allowing the imposition of conditions could provide an additional burden or risk to Contracting Entities, the Government believes that this approach will provide

additional flexibility in what is an otherwise potentially rigid authorisation process.

Option 3) Stipulations for all sub-systems

3.6.4 This option allows for stipulations to be available to the NSA for its authorisation of all subsystems (rolling stock and infrastructure) so that the benefits of this approach can be applied to the whole railway. Feedback from stakeholders has indicated that it would be useful for all subsystem authorisations, particularly infrastructure subsystems, to potentially be subject to similar conditions. For example, where a part of the railway is subject to an engineering possession for upgrade or renewal work, if by the time the possession is required to end, not all subsystems that are in place conform with the relevant TSIs and/or NNTRs or the verification and certification process has not yet been formally completed and the subsystem is otherwise safe for use, then this approach could stipulate a time-bound authorisation enabling the railway to return to use. It is considered that this option would create less disruption and not incur the significant costs of the alternative approach which would require closing that section of railway until full conformity is achieved.

Proposed option

3.6.5 The Government is proposing to choose option 3) giving the NSA the ability to stipulate restrictions and limitations when appropriate in the authorisation of all subsystems.

3.7 Type Authorisation

3.7.1 Under RIR 2006, new batches of rolling stock are required to undergo the full verification and authorisation process for each batch of vehicles produced even if they are of essentially the same design and manufacture. Contracting Entities are only permitted to build "more of the same" vehicles without requiring additional authorisation when exercising a contract option within a set period of the date of the first authorisation of the original batch of vehicles. The new Directive instead provides for a new "type authorisation" process for rolling stock to allow Contracting Entities to use an existing “off the shelf” design if it meets their needs and for this to be authorised on the basis of a declaration of conformity to type. This is a provision which the UK Government argued strongly in favour of in negotiating the new Directive.

3.7.2 The Office of Rail Regulation recently commissioned a short desk study looking at the impact of the Freight Wagon TSI on the rail freight wagon industry. The study found that the average cost of full authorisation per wagon

was £3,500 which, for an average size fleet of wagons, produced average costs of around £150,000 to £180,000 per authorisation. There is therefore potential for significant costs savings for freight wagon owners in using the type authorisation process.

Option 1) Provide for type authorisations for the rolling stock subsystem only

3.7.3 This option would represent a direct transposition of the new Directive's provisions which introduces a type authorisation process only for new rolling stock that has been authorised under the new regime. This is expected to provide a positive outcome for industry by reducing the need to repeatedly follow the full authorisation process for a series of identical, or broadly similar, rolling stock subsystems and the costs associated with that process. The Government does recognise however that this process will place an additional regulatory burden on the NSA in terms of providing a Determination of Type letter to the Contracting Entity for the initial authorisation and in supplying the necessary data to the European Railway Agency (ERA) so that it can record it on their Type Register. However, it is clear that if subsequent rolling stock projects are subsequently able to make use of this and apply for a type authorisation then overall it can be argued that the regulatory burden on the NSA will be substantially reduced (although of course the burden of the work and cost of processing the initial full authorisation would still remain). The work involved in processing the type authorisation would be significantly less than the process for conducting a full authorisation. The addition of this process will, for example, be of particular benefit to the UK freight industry which frequently orders batches of similar vehicles to add to existing fleets.

Option 2) Provide for type authorisations for all sub-systems

3.7.4 This option is the same as option 1) but would expand the type authorisation process to infrastructure subsystems in recognition that the benefits it will provide to rolling stock could also be realised for other subsystems. By using RIR 2010 to expand the type authorisation process to encompass all subsystems, there would be scope to reduce the costs of repeated authorisation across the whole railway. Although there will be a further up-front regulatory burden for the NSA in terms of administration costs should a Contracting Entity ask for a determination of type, as with option 1), the Government believes that the additional benefits for the industry outweigh the additional potential costs for the NSA, even if the process is just used once.

Proposed option

3.7.5 The Government has chosen option 2) because it will provide all of the benefits and associated cost savings to all subsystems which will produce

greater savings across the whole industry. Whilst we recognise that this will potentially place an increased up-front regulatory burden on the NSA, we believe that the initial costs for the NSA are easily recovered though use of the process and in any case are outweighed by the overall benefits for the industry. The proposed draft Regulations therefore introduce an automatic mechanism for a process of statutory type approval of authorised rolling-stock subsystems and allow other subsystems to have the process applied.

3.8 Type Authorisation when TSI changes

3.8.1 When a Contracting Entity wants to make use of an existing 'determination of type', they need to know before starting their project whether any part of a TSI or NNTR has changed. If these technical standards have changed then they will need to know to what extent the Essential Requirements are impacted. The new Directive requires that the Member State makes this decision.

Option 1) Statutory review of TSIs when they change and review type authorisation validity

3.8.2 This option envisages a reactive system whereby an authorised type is always subject to review following a TSI change. The Government considers that to conduct an automatic review of type authorisations after a standards change has happened will have limited benefit and would be a waste of public resources where the authorised type was no longer in use.

Option 2) Contracting Entity reviews TSI change only when using type authorisation

3.8.3 An alternative approach would be that the Contracting Entity, when considering a project which could rely on an existing determination of type, checks whether there are changes to standards. The NSA would then consider whether the changes are material to the application (i.e. the subsystem's ability to conform with the Essential Requirements). This option would be more cost effective than option 1) as the assessment of the changes to standards would only be undertaken when a Contracting Entity seeks to make use of a determination of type.

Proposed Option

3.8.5 The Government believes option 2) should allow for cost savings for both the Contracting Entity and the NSA.

3.8.6 In the event that determinations of type are made for subsystems other than rolling stock subsystems, it would be helpful if the Safety Authorities made available lists of such type determinations in order to provide full visibility of the types available in the UK (a list of rolling stock types should be available in the European Railway Agency's register of authorised types). However, we do not think that the creation of a list of non rolling stock determinations of type should be a requirement in the proposed Regulations.

3.9 Additional authorisation for rolling stock already authorised in another Member State

3.9.1 Attainment of an authorisation (proving compliance with TSIs) reduces technical barriers for vehicles intended for international traffic through the availability of a common harmonised process. However, another Member State is allowed to require a "reauthorisation" (or a further authorisation) to ensure local compatibility with their national network. The new Directive explicitly defines the limits of any re-authorisation to prevent any repeat of checks undertaken on vehicles already authorised in another Member State. The Government has considered three options for implementation.

Option 1) Mandatory re-authorisation

3.9.2 This option would mandate the authorisation of rolling stock which had already been authorised in another Member State. Such an approach goes against the overall harmonising intentions of the new Directive although it is permitted.

3.9.3 This option could have the effect of driving up costs for the Contracting Entity through additional authorisation processes that are currently not required in the UK.

Option 2) No statutory provisions for re-authorisation

3.9.4 For safety reasons, compatibility of a vehicle with the network must always be demonstrated. Therefore a Contracting Entity must apply the necessary national rules or requirements to a vehicle in order to obtain access to the railway infrastructure. Under this option this process would be implemented administratively and under the cover of the requirements of existing safety legislation (with no specific requirements in RIR 2010) as is currently the case with RIR 2006.

Option 3) Voluntary re-authorisation

3.9.5 This option would allow a Contracting Entity to seek, on a voluntary basis, a re-authorisation for the placing into service of a vehicle in the UK. There is a twofold advantage of this option for the Contracting Entity: firstly, it offers an open, transparent and non-discriminatory process to obtain access to the railway infrastructure in the UK; and secondly, it allows for a harmonised (i.e. pan-EU recognised) approach against which the Contracting Entity can seek access. This option would provide for a transparent re-authorisation process and would prevent the possibility for more onerous requirements to be applied to a Contracting Entity whose vehicle had already been authorised in another Member State.

Proposed Option

3.9.6 The Government is proposing to choose option 3) allowing Contracting Entities the flexibility of voluntarily applying for re-authorisation of an already approved vehicle. The Government believes that this option is the most flexible and transparent option for the industry while best achieving the intentions of interoperability.

3.10 Verification

3.10.1 Under RIR 2006, Notified Bodies ("NoBos") are tasked with carrying out all necessary assessment and verification of new subsystems for conformity with relevant TSIs and UK Notified National Technical Rules ("NNTRs") before authorisation can be given. Although nothing in RIR 2006 explicitly prevents a non-UK NoBo from verifying UK NNTRs, the Government is conscious that there is a lot of uncertainty whether the use of a non-UK NoBo is permitted. The Government believes the review of the current framework governing the interoperability process in the UK should address this issue.

Option 1) NoBos continue to carry out all verification work

3.10.2 This option reflects the current approach under RIR 2006. It does not clarify whether a non-UK NoBo can verify NNTRs. The NoBo is responsible for ensuring all verification is completed, going beyond the remit provided for it in the Directive.

Option 2) Introduce DeBos for assessment of NNTRs

3.10.3 This option would introduce the role of the Designated Body ("DeBo") for the assessment of NNTRs only, making it clearer that the market for verification services is fully open to non-UK conformity assessment bodies. This approach is consistent with both the intentions of the new Directive and broadly aligns with

the approach of many other Member States which achieves a key pillar of interoperability in that the operating environment is similar across the EU.

3.10.4 This option would provide the Contracting Entity with increased flexibility in choosing a body to verify NNTRs. We believe that this would facilitate competition, bringing with it a positive impact (i.e. lowering) of the costs of the verification process as assessment bodies look to keep their fees competitive in a wider market.

3.10.5 This option would introduce new regulatory burdens. There would be an initial set up cost to establish the governance process and legal arrangements for DeBos. There would be a cost transfer from the NoBo to the DeBo with regards to the costs associated with any surveillance and re-assessment work undertaken by UKAS. Overall, the increased flexibility and market opening should result in a reduction in costs for the railway sector as a whole.

Proposed Option

3.10.6 The Government proposes to choose option 2) and to limit the scope of verification by NoBos to TSIs with DeBos verifying NNTRs. This change will not prevent a NoBo (whether a UK or a foreign NoBo) from also being designated as a UK DeBo and being appointed by a Contracting Entity for both areas of work.

3.11 Enforcement

3.11.1 Under the new Directive, Member States are free to make their own arrangements for enforcing the obligations contained within it. The existing enforcement regime is set out in RIR 2006 but the wider review of the regulatory framework which the new Directive has stimulated means that options for future enforcement should be considered. These are outlined below.

Option 1) Maintain the current enforcement mechanism system of enforcing

3.11.2 This option would see the existing health and safety enforcement regimes for Great Britain and the Channel Tunnel (which adopts provisions in the Health and Safety at Work Act 1974 - HSWA) and for Northern Ireland (which adopts provisions in the Health & Safety at Work (Northern Ireland) Order 1978 (HSWO), which is very similar to the HWSA) continue as they are. For Great Britain and the Channel Tunnel, the Office of Rail Regulation ("ORR") is the enforcing authority and sets out its enforcement policy statement on its

web site[3]. ORR's enforcement policy is generally accepted to be reasonable and proportionate by Government and industry alike. Essentially the existing regime follows a process of issuing improvement or prohibition notices for a breach of health and safety legislation which can result in a fine and/or imprisonment. The penalties increase based on the severity of the safety breach with the most severe awarded for cases where there has been a catastrophic and systemic safety failure. The Health and Safety Executive Northern Ireland explicitly has this role for Northern Ireland and its enforcement policy statement can be found on its website.[4]

Option 2) Maintain the current enforcement mechanism system of enforcing but with some improvements and updates

3.11.3 In addition to the continued approach with enforcement under the HSWA/ HSWO regime as set out in option 1) above, this option allows for significant changes to the text of RIR 2006 to adopt and, where appropriate, modify the changes to the HSWA provisions regarding offences under Health and Safety law. This option also uses the EC Regulation on Accreditation of Market Surveillance (RAMS) which became effective from 1 January 2010 (EC Regulation No 765/2008). Provisions on enforcement in RAMS would be implemented in RIR 2010 by allowing enforcing authorities to require the withdrawal and/or recall of interoperability constituents that have been placed on the market in the United Kingdom.

Option 3) Economic enforcement, civil regime

3.11.4 An alternative option to making use of the sanctions provided for under HSWA/HSWO would be to pursue economic enforcement through a civil law regime. This option would allow Ministers to confer new civil sanctioning powers on the safety authorities, similar to the powers set out in the Regulatory Enforcement and Sanctions Act 2008. This would give the safety authority a range of options such as imposing fixed financial penalties or discretionary requirements. This could include the issuing of compliance, restoration or stop notices. This would allow the safety authority to accept enforcement undertakings from businesses that guarantee that corrective steps will be taken. This would still need to be supplemented with HSWA/HSWO powers where a potential breach of has an impact upon safe operations of the network and a quick response is required.

[3] http://www.rail-reg.gov.uk/server/show/nav.1848)
[4] http://www.hseni.gov.uk/enforcement_guidelines-2.doc

Proposed option

3.11.6 The Government favours option 2), i.e. updating the general enforcement arrangements using safety legislation that currently exists where appropriate. This approach has so far worked well and despite the argument that can be made for a civil and economic based enforcement regime as set out above in option 3) we believe that the additional costs involved with moving to a new enforcement regime are not outweighed by any potential benefits.

3.12 Appeals Route (against NSA decisions)

3.12.1 Once the National Safety Authority (NSA) has made a decision regarding the authorisation of a subsystem, the new Directive states that there must be an appeals process that allows the Contracting Entity to put their case forward if they think that they have been unjustly treated by a NSA. However, the new Directive leaves it to individual Member States to decide how this appeals process should operate in practice. The Government estimates that the number of appeals sought by Contracting Entities over decisions made by the NSA will be small in number and not particularly significant when compared to the overall number of decisions made by the NSA. This partial Impact Assessment considers the options for the introduction of an appeals process in Great Britain only. Discussions over the appropriate appeals process for Northern Ireland (where the number of appeals will be significantly lower) are ongoing between the Department for Transport and the Department for Regional Development Northern Ireland.

Option 1) Do nothing - Judicial Review as final appeals mechanism

3.12.2 The first option is to continue with the status quo, which allows for a Contracting Entity to apply to the Administrative Court to request a Judicial Review of the merits of their case and to challenge the decision made by the NSA. Before making a claim for judicial review, the Contracting Entity is required to send a letter to the defendant to identify the issues in dispute and to establish whether litigation can be avoided. If no resolution occurs as a result of this, then the Contracting Entity must make the application using the correct form and then lodge the application with HM Courts Service. The claim form must include or have attached to it, the following information: i) a detailed statement of the claimant's grounds for bringing the claim for judicial review; ii) a statement of the facts relied on; iii) any application to extend the time limit for filing the claim form; and iv) any application for directions.

3.12.3 However, this option places a significant burden on the Contracting Entity as they need to be pro-active in pursuing this option and ensure that they have provided all necessary information. This process can also take some time resulting in delays to the Contracting Entity's project until it is complete and thus increasing the project's costs. Furthermore, the courts system could have significant difficulties in hearing appeals within a reasonable time. There are specific but small fees to be paid for to the court in order to lodge the initial application for permission to apply for Judicial Review, with an additional larger fee to be paid if the Contracting Entity decides to pursue the claim should the court grant permission for it to be heard (a couple of hundred pounds in total). However, these costs are insignificant compared to the potential cost of delays to a project.

Option 2) The Secretary of State hears appeals

3.12.4 The response to our first consultation showed that there is significant stakeholder support for the Secretary of State (or an independent expert appointed on his behalf) to hear appeals. The Secretary of State is also the appeal authority under the Railway and Other Guided Transport Systems (Safety) Regulations 2006. This appeals process allows for a party that is aggrieved by a decision of the Office of Rail Regulation (ORR) to appeal to the Secretary of State on three points: i) where the ORR has refused an application for either a safety certificate or safety authorisation or for an amended safety certificate or safety authorisation; ii) by a direction of the Office of Rail Regulation to make an application to amend their safety certificate or safety authorisation; or iii) by a decision of the Office of Rail Regulation to revoke their safety certificate or part of it; or their safety authorisation. Given the number of interfaces between the railway safety regime (as governed by ROGS 2006) and the interoperability regime, this option would have the benefit of aligning the appeal hearing process for both.

Option 3) A tribunal hears appeals

3.12.5 As with option 1), a significant benefit of using a tribunal is that the appeal hearing and decision made would be independent of Government and would avoid the situation where the Secretary of State might have to consider over-turning a safety-based decision made by the ORR.

3.12.6 However, while Employment Tribunals are allowed to consider health and safety matters that fall within the Health and Safety at Work Act 1974, discussions with the Ministry of Justice have indicated that to use an Employment Tribunal for the purpose of hearing safety appeals with regards to interoperability would be to push the jurisdiction of an Employment Tribunal in a novel direction. This could involve the drafting of quite complex legal provision which could require amendments to primary legislation. This would take quite

some time before this option could be realised. If a wholly new jurisdiction were to be created for hearing appeals on interoperability then the Tribunals Service has advised that the set-up and running costs could be very high. The set-up cost could total circa £100,000, and could include ongoing maintenance costs of between £10,000 and £25,000 per annum (as an estimated share of overall costs to Tribunals Service).

Option 4) The Economic Regulator hears appeals

3.12.7 A fourth option would provide for the ORR as the economic regulator for Great Britain to hear appeals. This approach would be relatively inexpensive to set up. However, as it is the ORR, in its role as the NSA, that made the original decision in the first place, it is difficult to see how it could make an objective and fully considered decision that was different from its original decision and supported by external parties. Any safeguards that were put in place such as ensuring that a separate part of ORR heard an appeal from the team that made the original decision may not be enough for external parties to have sufficient confidence in this system.

Proposed option

3.12.8 Option 2) is the preferred choice for appeals against the ORR in Great Britain. This would align the process with that provided for under ROGS 2006.

3.13 Register of infrastructure

3.13.1 The new Directive includes (in Article 35) requirements for a register of infrastructure. Existing provisions in RIR 2006 require an infrastructure register to be created when infrastructure is authorised and modified (and there are similar provisions for rolling stock registers). The new Directive makes the requirements for the register of infrastructure apply to existing infrastructure, and there is therefore a need to make a change to the provisions in RIR 2006.

Option 1) Do nothing

3.13.2 Member States are obliged, by EU law, to implement all Directives in full into domestic legislation and the requirements for the register of infrastructure are explicitly marked up for transposition in Article 38 of the new Directive.

Option 2) Make provision for the register of infrastructure

3.13.3 The current RIR 2006 Regulation 31 makes provision for infrastructure registers and rolling stock registers for authorised subsystems, and requires

amendment now that the requirements for the National Vehicle Register have been further developed. The requirement for an infrastructure register extends to existing infrastructure, but it is not anticipated that the register will need to duplicate the data in existing asset databases or duplicate the requirements of other legislative requirements. Instead, the register is only expected to detail the variance with the specification in TSIs and incorporate any other information that is specified in TSIs, particularly where it is necessary for the introduction of interfacing subsystems.

Proposed option

3.13.4 Option 2) is the preferred approach, however it is unclear at this stage what the precise costs and benefits will be - respondents to the consultation are therefore encouraged to provide evidence to support the Impact Assessment.

Specific Impact Tests: Checklist		
Type of testing undertaken	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

4.1 Competition Assessment

4.1.1 Interoperability, through the creation and application of standardised technical specifications, will contribute to the progressive creation of the internal market in the supply of equipment and services for the construction, renewal, upgrading and operation of the rail system within the Community. It will also facilitate a wider availability of international rail services run by different operators across Member State's national borders. Both of these measures will allow and encourage increased competition across the European Union within the rail sector.

4.2 Small Firms Impact Test

4.2.1 In considering the application of the interoperability regime under RIR 2006, the Government's conclusion in the related Impact Assessment was that the impact on small firms (these are categorised by the European Union as having fewer than 50 full-time equivalent employees) was relatively minimal. This was

based on the fact that the railway industry was already a highly regulated and standards driven sector.

4.2.2 The Government considers that the new draft Regulations will only have a noticeable impact on the UK Notified Body (NoBo) market. Although a significant proportion of such firms are quite large organisations and do not fall into the small firm category, there are some quite small NoBo organisations which may have only a couple of employees. The impact occurs because we are proposing to explicitly open up the UK NoBo's role of verifying national standards to foreign based Notified Bodies, which is expected to result in a more competitive environment within the UK and which should help keep verification costs lower. The expectation is therefore that the Regulations, (and the pan-European standards that they will mandate), should be relatively straightforward to implement and should have a relatively insignificant impact on small firms.

4.3 Legal Aid

4.3.1 It is not considered that the proposals have any implications for legal aid.

4.4 Sustainable Development

4.4.1 The proposals do not require the scrapping and replacement of existing infrastructure and vehicles earlier than their normal expected life expiry dates and so do not cause an increased waste burden. If anything the proposals will over time lead to a smaller number of standardised rail product types being required as a product will be accepted more widely across the EU. This should lead to less redundancy of second hand rolling stock vehicles as they will have a larger market in which to be re-used.

4.5 Carbon Assessment

4.5.1 It is not considered that the proposals will have a material impact on carbon emissions.

4.6 Other Environment

4.6.1 An indirect benefit of the proposals will be from the observance of the Rolling Stock Noise Technical Specification for Interoperability which over time could help reduce the noise pollution emitted from locomotives and rail vehicles.

4.7 Health Impact Assessment

4.7.1 It is not considered that the proposals will have any noticeable direct impact on the health and well being of employees and users of the rail system or anyone else who comes into contact with the system.

4.8 Race Equality

4.8.1 It is not considered that the proposals will have any significant implications for race equality, although, in ensuring the needs of passengers are met through the application of the Technical Specification of Interoperability for Persons with Reduced Mobility ("PRM TSI"), it is likely that all passengers will benefit.

4.8.2 In particular the PRM TSI specifies, for example, common standards such as pictograms which should assist those who are unable to read English in locating information and emergency devices. Visual information on passenger information systems can also be matched with written instructions for station names.

4.9 Disability Equality

4.9.1 RIR 2010 replicates the end date, of 1 January 2020, by which time all trains must be accessible. These provisions will give disabled people, and the broader group of "persons with reduced mobility" for whom the technical standards of the PRM TSI are designed, certainty about when all trains will be accessible to them.

4.9.2 All new trains introduced into service must be fully compliant with the PRM TSI but, since the technical standards it contains are also applicable to older trains when they are upgraded or renewed within the scope of works being undertaken, these provisions will further enhance the ability of disabled people to access services in advance of the end date.

4.9.3 It should be remembered that light rail vehicles (those used on metro, tram and underground systems and guided modes of transport) are subject to a separate, domestic, accessibility regime under the Rail Vehicle Accessibility Regulations 1998 which will shortly be revoked and replaced by the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010.

4.10 Gender Equality

4.10.1 It is considered that the proposals will have a positive impact on the promotion of gender equality since the retention of mandatory standards in relation to persons with reduced mobility (which includes, for example, pregnant women and those travelling with small children) will ensure that trains become more accessible to this group.

4.11 Human Rights

4.11.1 It is considered that the proposals are compatible with the European Convention on Human Rights.

4.12 Rural Proofing

4.12.1 The proposals are not expected to have any impact on rural areas.