

Title: The Railways Infrastructure (Access and Management) Regulations 2015 IA No: DfT00300 Lead department or agency: Department for Transport Other departments or agencies:	Impact Assessment (IA)		
	Date: 04/08/2014		
	Stage: Consultation		
	Source of intervention: EU		
	Type of measure: Secondary Legislation		
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Summary: Intervention and Options			RPC: Amber

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB in 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
NQ?	NQ	NQ	No	N/A

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

EU Directive 2012/34/EU consolidates existing EU legislation and covers a wide range of policy areas designed to address several market failures in the EU railway market such as: low levels of competition within rail; low levels of public and private investment in railways; and inadequate regulatory oversight by national authorities within EU Member States. None of these general problems are considered to be significant issues in the domestic railway market of GB, so although the UK is required to implement the Directive, its national railway market does not face the problems which the Directive is designed to address. While the impacts are likely to be reduced compared to less liberalised EU railway markets, because most of this Directive repeats existing EU provisions which have already been implemented into GB legislation, certain provisions in the Directive are new and are not implemented by existing domestic GB legislation. These may result in benefits by increasing competition and opening access to certain rail service facilities.

What are the policy objectives and the intended effects?

The main objectives in implementing the Directive are to maximise the benefits which accrue in GB both to the railway sector and to the wider economy by: increasing competition within the railway sector; decreasing the cost of passenger and freight transport; supporting greater consistency in the regulatory environment to give greater certainty for UK businesses wishing to operate in more than one EU country; implementing measures which minimise avoidable costs and burdens on GB businesses, for example by implementing optional measures which provide further flexibility or reduce requirements on businesses; reducing the risk of infringement proceedings against the UK in respect of the implementation of the Directive in the UK.

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

Option 1 is an alternative to regulation and is a “do nothing” approach. However, it is not the preferred option because the risk of infringement proceedings against the UK is unacceptably high and because none of the benefits would accrue, for example consistent regulation for rail businesses which operate across the EU. Option 2 implements the Directive by “copy out”. Options 3-5 implement the Directive by amending existing GB legislation with which GB businesses are already familiar, thereby lowering the cost of adaptation compared to completely new Regulations based on copy out. Option 3 implements only the mandatory requirements. Option 4 implements the mandatory requirements plus those optional provisions which provide further flexibility to GB businesses and public authorities. Options 5 implements the mandatory requirements plus all optional provisions (including those which increase burdens). Option 4 is the preferred option because it implements all mandatory requirements and reduces the risk of infringement proceedings, but also takes advantage of the optional provisions which allow further flexibility and reduce requirements on businesses.

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date:				
Does implementation go beyond minimum EU requirements?			Yes (optional provisions are implemented to reduce burdens in GB)	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: NA	Non-traded: NA

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 2 (Option 1 is do nothing)

Description: Implement the Directive through a “copy out” approach

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: NQ

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

Description and scale of key monetised costs by ‘main affected groups’

Due to limitations in the available evidence base, it has not been possible at this stage to monetise the potential costs identified under Option 2. During public consultation consultees will be invited to provide evidence on the likely costs that would be incurred as a result of using copy out to transpose the Directive.

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

The Directive largely consolidates or “recasts” existing EU legislation. This has already been implemented in GB by the Railways Infrastructure (Access and Management) Regulations 2005. Businesses and public authorities are very familiar with these Regulations. However, because a pure copy-out approach was not followed in these Regulations, if a completely new set of Regulations based on copy-out is introduced those organisations would incur significant costs in adapting to the new Regulations, particularly in trying to ascertain whether and when the new wording was intended to convey a new meaning. A new set of regulations based on copy out would also give the impression that significant changes had been made rather than a “Recast” or consolidation exercise. The exact scale of these additional costs is uncertain and would vary from one business to another. Other costs are as per Option 3.

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

Description and scale of key monetised benefits by ‘main affected groups’

Due to limitations in the available evidence base, it has not been possible to monetise the potential benefits identified under Option 2. During public consultation consultees will be invited to provide evidence on the likely benefits that would be incurred as a result of using copy out to transpose the Directive.

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

The benefits from implementing this Directive will be minimised because previous EU legislation which this Directive consolidates has already been fully implemented in GB. However the genuinely new provisions which have not previously been implemented could bring additional benefits in terms of increasing competition and opening access to certain rail service facilities. The benefits are identical to Option 3.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Given the limitations of the available evidence base, it has not been possible to monetise any of the costs and a number of the benefits that have been identified in this impact assessment. Where it has not been possible to monetise a cost or benefit, a full qualitative description of the cost or benefit is provided in the evidence base of this impact assessment. Once received the responses from public consultation will be used to monetise the costs and benefits described in this impact assessment.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: NQ	Benefits: NQ	Net: NQ	No	NA

Summary: Analysis & Evidence

Policy Option 3

Description: Amend the 2005 Regulations to implement only the mandatory provisions (listed in Themes 1 – 7 below) without implementing any optional provisions (including optional scope exclusions in Themes 8-11).

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: NQ

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

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

Due to limitations in the available evidence base, it has not been possible at this stage to monetise the potential costs identified under Option 3. During public consultation consultees will be invited to provide evidence on the likely costs that would be incurred.

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

1) Where a railway undertaking, infrastructure manager or service facility operator is required to comply with new provisions in the Regulations, they are likely to incur administrative costs in putting the processes in place in order to comply. However the scale of these costs is uncertain and would vary from one railway undertaking or service facility operator to another. This element of the costs is the same as in options 4 and 5. 2) This option only implements the mandatory provisions in the Directive. By not taking advantage of optional provisions to reduce burdens this would be inconsistent with wider government policy to reduce costs and burdens wherever possible.

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

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

Due to limitations in the available evidence base, it has not been possible at this stage to monetise the potential benefits identified under Option 3. During public consultation consultees will be invited to provide evidence on the likely benefits that would be incurred.

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

Implementing these provisions by amending the 2005 Regulations would fulfil the primary objective of increasing competition in the rail sector. This option would also have the advantage of not requiring businesses and public bodies to adapt to a completely new set of "copy out" regulations. It would avoid the high chance of infringement proceedings in the event of non-implementation.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Given the limitations of the available evidence base, it has not been possible at this stage to monetise the costs and a number of the benefits that have been identified in this impact assessment. Where it has not been possible to monetise a cost or benefit, a full qualitative description of the cost or benefit is provided in the evidence base of this impact assessment. Once received the responses from public consultation will be used to monetise the costs and benefits described in this impact assessment.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: NQ	Benefits: NQ	Net: NQ	No	N/A

Summary: Analysis & Evidence

Policy Option 4

Description: Amend the 2005 Regulations to (a) implement the new mandatory provisions (Themes 1 - 7); and (b) implement all optional provisions which reduce burdens in UK (Themes 8 and 9)

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: NQ

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

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

Due to limitations in the available evidence base, it has not been possible at this stage to monetise the potential costs identified under Option 4. During public consultation consultees will be invited to provide evidence on the likely costs that would be incurred as a result of using copy out to transpose the Directive.

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

Where a railway undertaking, infrastructure manager or service facility operator is required to comply with new provisions in the Regulations, they are likely to incur administrative costs in putting the processes in place in order to comply. However the scale of these costs is uncertain and would vary from one railway undertaking or service facility operator to another.

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

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

Due to limitations in the available evidence base, it has not been possible at this stage to monetise the potential benefits identified under Option 4. During public consultation consultees will be invited to provide evidence on the likely benefits that would be incurred as a result of using copy out to transpose the Directive.

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

Implementing these provisions by amending the 2005 Regulations would fulfil the primary objective of increasing competition in the rail sector. This option would also have the advantage of not requiring businesses and public bodies to adapt to completely new "copy out" regulations. It would avoid the high chance of infringement proceedings in the event of non-implementation. It would also further reduce burdens on businesses by implementing the optional provisions, allowing further flexibility.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Given the limitations of the available evidence base, it has not been possible at this stage to monetise the costs and a number of the benefits that have been identified in this impact assessment. Where it has not been possible to monetise a cost or benefit, a full qualitative description of the cost or benefit is provided in the evidence base of this impact assessment. Once received the responses from public consultation will be used to monetise the costs and benefits described in this impact assessment.

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: NQ	Benefits: NQ	Net: NQ	No	N/A

Summary: Analysis & Evidence

Policy Option 5

Description: Amend the 2005 Regulations to implement in accordance with option 4, but implementing all optional provisions (including those listed in theme 10 which goes beyond a minimum or copy out approach and does not offer the best value for money overall).

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: NQ

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

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

Due to limitations in the available evidence base, it has not been possible at this stage to monetise the potential costs identified under Option 5. During public consultation consultees will be invited to provide evidence on the likely costs that would be incurred as a result of using copy out to transpose the Directive.

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

This option would implement all mandatory and optional provisions in the Directive. By failing to take advantage of flexibility not to implement some burdensome provisions the costs on businesses would increase under this option. This would not be consistent with wider Government policy on gold plating. Costs are otherwise as per option 4.

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

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

Due to limitations in the available evidence base, it has not been possible at this stage to monetise the potential benefits identified under Option 5. During public consultation consultees will be invited to provide evidence on the likely benefits that would be incurred as a result of using copy out to transpose the Directive.

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

This option would also have the advantage of not requiring businesses and public bodies to adapt to completely new "copy out" regulations. It would avoid the high chance of infringement proceedings in the event of non-implementation as it does implement mandatory provisions, however the benefits by implementing the optional provisions in option 4 are reduced significantly by also introducing optional provisions that increase burdens.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Given the limitations of the available evidence base, it has not been possible at this stage to monetise the costs and a number of the benefits that have been identified in this impact assessment. Where it has not been possible to monetise a cost or benefit, a full qualitative description of the cost or benefit is provided in the evidence base of this impact assessment. Once received the responses from public consultation will be used to monetise the costs and benefits described in this impact assessment.

BUSINESS ASSESSMENT (Option 5)

Direct impact on business (Equivalent Annual) £m:	In scope of OITO?	Measure qualifies as
Costs: NQ Benefits: NQ Net: NQ	Yes	N/A

Evidence Base

1. Background

EU economic rail legislation has been heavily amended and expanded since its beginnings in the early 1990s. The result was a complex web of measures in a range of different instruments.

Directive 2012/34/EU of the European Parliament of 21 November 2012 establishing a single European railway area (recast), (“**the Directive**”) repeals and consolidates (“recasts”) a tranche of this legislation into one place for ease of reference, but also makes some changes to substantive law in some places.

The relevant areas of EU legislation in place prior to the Directive are currently implemented in Great Britain by regulations concerned with access and management of railway infrastructure¹ and the licensing of railway undertakings² (“**the 2005 Regulations**”); and the regulatory and funding provisions that were put in place during GB rail privatisation via the 1993 Railways Act and subsequently the Railways Act 2005; as well as legislation in respect of the Channel Tunnel³. These have been further amended as required.

Although the Directive repeals and re-enacts a large amount of EU law in a consolidated form, much of this involves no substantive change in the law. This Impact Assessment does not consider areas where existing EU legislation has not been substantively changed (and is therefore already implemented in the UK). This applies also where optional provisions remain the same.

Under provisions included in the Directive, the European Commission is required to adopt a number “implementing or delegated acts” (i.e. tertiary legislation applicable in the UK and other EU Member States) which may, broadly, set out further detail regarding the implementation of provisions. Implementing Acts and Delegated Acts are separately negotiated by the European Commission and Member States, they have a direct effect in GB and therefore do not form a part of this consultation. A table summarising the expected Implementing Acts and Delegated Acts, what they cover and timing of implementation where it is known has been included at [Annex C](#).

This impact assessment covers the impact of the Directive on Great Britain (GB). Transport is a devolved matter for Northern Ireland whose devolved authorities have elected to implement pre-Directive provisions via statutory instruments applicable to Northern Ireland⁴. Since the Directive will be implemented in respect of Northern Ireland by the Department for Regional Development (DRD), impacts in Northern Ireland are not considered as part of this impact assessment.

EU legislation in place prior to the Recast Directive has been implemented in respect of the Channel Tunnel separately, via bi-national regulation, given the force of law by a statutory instrument⁵. As part of recent infringement proceedings for non-compliance with various provisions in the First Railway Package with respect to the Channel Tunnel, the European Commission alleged that the Intergovernmental Commission (IGC) lacked the ability to take regulatory decisions on its own initiative and lacked the necessary regulatory independence. Furthermore, the European Commission alleged that there was no method of apportioning infrastructure costs in place that was compliant with EU legislation. The UK and French Governments did not accept the Commission’s complaints. However, in a spirit of cooperation, and in return for the Commission agreeing not to pursue these complaints, the UK and France agreed to do the following:

- Transfer economic regulation of the Tunnel to the domestic regulators, the Office of Rail Regulation (ORR) and the Autorité de Régulation des Activités Ferroviaires (ARAF);
- Give the regulator further enforcement powers, in particular with regard to own initiative investigations;
- Have a more explicit charging framework in place;

In addition, the above transfer of regulatory functions required some specific provisions regarding cooperation between the two national regulators.

¹ The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049)

² The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050).

³ The Channel Tunnel (International Arrangements) Order 2005 (S.I. 2005/3207) (as amended) implements the relevant legislation applicable to the Channel Tunnel.

⁴ The Railways Infrastructure (Access Management, and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 and the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations (Northern Ireland) 2009

⁵ See footnote 3.

Under the agreement mentioned above, these measures must be in force by 31 March 2015.

The result of these measures will be that the 2005 Regulations will apply to the Channel Tunnel (except where exemptions under EU law apply).

Insofar as the Channel Tunnel is concerned, this impact assessment therefore assumes that these changes will have been made by 31 March 2015. In order to assess the impact of the changes made to implement the Recast Directive, it takes as a baseline the situation as it should be from that date.

2. Problem under Consideration

The Directive is designed to consolidate EU legislation, and to improve the competitive position of the railway sector so it can compete effectively with other transport modes and support wider economic growth.

The Directive covers a wide range of policy areas and tries to address several market failures in the EU railway market such as:

1. Low levels of competition within rail.
2. Low levels of public and private investment in railways.
3. Inadequate regulatory oversight by national authorities within EU Member States often with insufficient independence, resources and power.

However, none of these general problems are considered to be significant issues in the domestic railway market of GB, nor is there a significant need for legislative consolidation, as, unlike EU legislation, GB implementing legislation was, largely, consolidated in 2005 and is not notably confusing. The extensive use of competitive tendering for passenger rail franchise contracts and the existence of open access passenger services means that GB has one of the most competitive railway markets in the EU. Competition in the rail freight market is also greater than in much of the rest of the EU, and there is no single dominant rail freight operator at present. GB is currently planning record levels of investment in infrastructure. In the Office of Rail Regulation GB already has an independent and adequately resourced regulator equipped with the necessary powers to regulate the market.

Although the UK is required to implement the Directive, its national railway market does not face the problems which the Directive is designed to address. This is likely to reduce the impacts of implementation. The UK is required under its obligations in the EU treaties to implement adequately EU legislation such as the Directive. However, the UK has some flexibility in designing implementing measures in order to maximise benefits and minimise costs.

In respect of the Channel Tunnel, any regulatory oversight problems will have been addressed by the legislation to be made by March 2015. As to the other issues, it is possible that traffic could increase, but any strategy for growth should take into account the balance of risk that has been agreed in order to finance the building of this unique piece of infrastructure. It must be noted that the provision of infrastructure services is already entrusted to private concessionaires, who have full commercial freedom, and therefore an incentive to reach the proper balance on those competing considerations.

3. Rationale for intervention

Fair and open competition within the rail sector provides benefits in increasing the sector's competitiveness compared to other modes and in decreasing the costs of rail transport to its users and funders such as passengers, freight shippers and taxpayers. The changes introduced by the Directive seek to support such competition, for example by improving transparency of access to service facilities, and increasing independence of the regulatory body and infrastructure manager in terms of decision making.

The UK is required to implement the Directive by 16 June 2015. While the impacts associated with the implementation of this Directive are likely to be smaller than in other, less liberalised EU railway markets, and most of this Directive repeats existing EU provisions without changing them, certain provisions in the Directive are new and are not implemented by existing domestic GB legislation and could bring additional benefits in terms of increasing competition and opening access to certain rail service facilities.

These provisions could also impose some additional costs on individual entities, which will need to be weighed carefully against any wider benefits. Aside from the costs that would result from

non-intervention and consequent infringement proceedings, we consider that government intervention is needed to ensure the realisation of the benefits that are likely to accrue from the Directive though we also note the need to minimise any avoidable costs.

4. Policy objectives

The main objectives in implementing the Directive are to maximise the benefits which accrue in GB both to the railway sector and to the wider economy by:

- Increasing competition within the rail sector through fostering non-discriminatory access to rail-related service facilities for all railway undertakings (train operating companies that provide services for the transport of goods or passengers by rail) and improving the transparency of conditions for accessing rail-related service facilities.
- Decreasing the cost of passenger and rail freight transport and increasing rail's attractiveness and share of the transport market.
- Greater consistency in the regulatory environment between EU countries which will mean greater certainty for UK businesses that are operating or wish to operate in more than one EU country.
- Ensuring implementing measures minimise avoidable costs and burdens on GB, for example by implementing optional provisions in the Directive which provide further flexibility or reduce requirements with which GB organisations will need to comply.
- Reduce the risk of infringement proceedings against the UK in respect of its implementation of the Directive within GB.

5. Description of options considered (including do nothing)

5.1. Option 1: Do nothing

If the UK adopts a “do nothing” approach in respect of GB, and does not amend its existing legislation to reflect the amendments made in the Directive (including the requirements of implementing or delegated acts), it is highly likely that the European Commission would conclude that the UK has failed to implement the Directive. The Commission would then initiate infringement proceedings against the UK with a high probability of a judgement against the UK in the Court of Justice of the European Union. Eventually non-compliance could lead to significant fines. The UK would also incur significant costs in contesting a case before the Court.

The costs and subsequent fines are unlikely to represent good value for money, given the low chance of success in such a case and the availability of other options for implementation. If, following a court judgement, the UK was required to rapidly amend its domestic legislation to comply with that judgement there would be less time to consult UK stakeholders on amendments than if the UK implements the Directive within the implementation deadline.

The benefits of implementation described in Option 4 would also not accrue in the UK in respect of GB. For these reasons this option is not the preferred approach.

5.2. Option 2: Implement the Directive through a “copy out” approach.

The UK's preferred approach to implementing EU legislation for GB in general is to adopt the requirements of a Directive by “copying it out” in domestic law. It is also policy to minimise the burdens imposed by implementing Regulations on businesses and public bodies.

Existing EU railway legislation, which this Directive consolidates, was implemented in respect of GB mainland by the 2005 Regulations. Businesses, such as railway infrastructure managers, train operating companies and public bodies such as GB's independent rail regulator, the Office of Rail Regulation, are highly familiar with the structure and drafting of those regulations and associated guidance. However, a strict copy out approach was not followed in the 2005 Regulations by the UK Government, and the same is true of the bi-national regulation for the Channel Tunnel. This means that following a copy out approach to implement the relatively minor changes made by this Directive would involve repealing the two 2005 Regulations and replacing them with a single document containing new and unfamiliar terminology and structure, often where no change in meaning was intended. Some provisions, e.g. requiring “Member States” to take action, would not be implemented. If we copy out the Directive both

businesses and public bodies would incur costs in adapting to the new “copy out” Regulations, particularly in trying to ascertain whether and when the new wording was intended to convey a new meaning.

Although this option would comply with the requirements of the Directive and is likely to meet the policy objective of increasing competition in the rail sector, it does not meet the policy objective of minimising avoidable costs and burdens, and therefore this option is not the preferred option.

5.3. Option 3: Amend the 2005 Regulations to implement only the mandatory provisions (listed in Themes 1 – 7 below) without implementing any optional provisions (including optional scope exclusions in Themes 8-11).

Mandatory obligations in the Recast Directive have been grouped into Themes 1 to 7 in this document. Implementing these provisions by amending the 2005 Regulations would fulfil the primary objective of increasing competition in the rail sector. This option would also have the advantage of not requiring businesses and public bodies to adapt to completely new “copy out” regulations. It would avoid the high chance of infringement proceedings in the event of non-implementation.

Although this would avoid the implementation of the optional provisions which are assessed not to be of benefit to industry, this option would also not enable GB to take advantage of those optional provisions in the Directive which *would* further reduce burdens on businesses and public bodies in GB. This would be inconsistent with wider government policy to reduce costs and burdens wherever possible. Option 3 is therefore not the preferred option.

5.4. Option 4 (preferred option): Amend the 2005 Regulations to (a) implement the new mandatory provisions (Themes 1 - 7); and (b) implement all optional provisions which reduce burdens in UK (Themes 8 and 9)

The costs and benefits of this option have been assessed on the basis that full implementation of this Directive would involve implementing all mandatory provisions plus those optional provisions that reduce the burdens on businesses, individuals and public bodies.

The adoption of some of these optional provisions would benefit industry by offering more flexibility, cost effectiveness or clarity. This approach will avoid the gold plating that would arise from not taking full advantage of any derogation. This is therefore the preferred option for implementation as it fully achieves the policy objectives set out in section 4.

This will mean going beyond a minimum or copy out approach in some cases but the effect will be deregulatory.

The costs and benefits of adopting mandatory provisions are the same as for Option 3 set out in Section 6.6. The incremental costs and benefits of implementing beneficial optional provisions are set out in Section 6.7.

5.5. Option 5: Amend the 2005 Regulations to implement in accordance with option 4, but implementing all optional provisions (including those listed in theme 10 which goes beyond a minimum or copy out approach and does not offer the best value for money overall).

The optional provision listed in Theme 10 has been assessed in section 6.8 as either increasing burdens or introducing additional requirements on businesses, individuals or public bodies. Implementing this provision would therefore be inconsistent with wider policy on gold plating and the increase of burden on businesses. This does not fulfil the policy objectives and is therefore not the preferred option.

Option 4 is preferred because it ensures the regulations allow maximum flexibility to achieve the lowest cost or greatest benefit where possible.

A table summarising the different elements of the proposal has been included at [Annex B](#). The estimated scale of costs has been included in the table, these costs will be amended after public consultation to correctly reflect the responses which are received during consultation.

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

6.1. Available evidence base

Due to the limitations of the available evidence base, it has not been possible at this stage to monetise most of the costs and benefits that have been identified in this impact assessment. Where it has not been possible to monetise a cost or benefit, a full qualitative description of the cost or benefit has been provided.

In order to strengthen the evidence base, the public consultation will seek additional evidence on the costs and benefits of the policy options that are discussed in this impact assessment. Having considered any additional evidence provided we will decide whether further analysis could be undertaken to improve the monetisation of costs and benefits. Any additional evidence that is submitted will be taken into account when the impact assessment is updated after the consultation.

6.2. Stakeholder evidence gathering exercise

The Department for Transport carried out a pre-consultation evidence gathering exercise earlier in the year, including meeting with stakeholders, to gain a broad understanding of the likely impacts of the various measures. Although this exercise was useful in generating qualitative information it was not possible for stakeholders to provide detailed information on monetised costs.

As this is a consultation stage IA, we are requesting evidence of costs and benefits in the consultation, which will help to monetise the impacts. We have also requested that, wherever possible, any evidence submitted is accompanied by the underlying data and analysis behind the calculations as well as any key assumptions.

Where it has not been possible to monetise a cost or benefit, a qualitative description of the cost or benefit has been provided to the extent that it is possible at this time. The consultation will also be useful in confirming our initial qualitative assessments.

In this impact assessment, where the magnitude of marginal costs/benefits are described, the following terms should be used as a guide:

- No / zero – costs/benefits equal to zero
- Negligible - costs/benefits close to or equal to zero

Where the magnitude of costs/benefits has not been mentioned, it is because we have insufficient evidence to comment at this stage, but hope to do so after we have received additional evidence from the consultation.

Consultation questions for each of the changes outlined in section 6 will include (but not limited to):

- Would the stakeholder be considered as a small or micro business under the definition given on in the glossary?
- Does the stakeholder believe themselves to be in scope of the change?
- If they do believe they are in scope of the change what is the cost impact? (We will ask them to provide evidence of how they came to that conclusion).
- What other impacts will they experience?

6.3. Risks, benefits, costs and assumptions

The impact of the Directive on GB's rail sector will be limited because the UK has fully implemented the predecessor Directives to this Directive, as detailed above.

Where the existing GB legislation, guidance or practice aligns with the approach set out in the Directive we have assumed that the costs incurred in implementing the measures will be of a transitional nature only and will not be material.

Some provisions in the Directive provide for subsequent elaboration of detailed methodologies and approaches through the development by the Commission of Implementing or Delegated Acts. Because these Acts are yet to be developed, it is not possible to calculate the costs or benefits of the associated provisions to infrastructure managers, railway undertakings or facility operators in respect of track and facility access charges.

6.4. Option 1: Do nothing.

The main reason why the 'Do nothing' approach is not the preferred approach relates to the likely foregone benefits. If the UK adopts a "do nothing" approach in respect of GB, and does not amend its existing legislation to reflect the amendments made in the Directive (including the requirements of implementing or delegated acts), it is highly likely that the benefits of implementation described in Option 4 would not accrue in the UK in respect of GB.

In addition, it is highly likely that the European Commission would conclude that the UK has failed to implement the Directive, and would then initiate infringement proceedings against the UK with a high probability of a judgement against the UK in the Court of Justice of the European Union. Eventually non-compliance could lead to significant fines. For these reasons this option is not the preferred approach.

6.5. Option 2: Implement the Directive through a "copy out" approach.

Following a copy out approach for the relatively minor changes made by this Directive would introduce new and unfamiliar terminology inconsistent with the existing 2005 Regulations. This option has therefore not been considered further here for reasons set out in section 5.2.

6.6. Option 3: Amend the 2005 Regulations to implement only the mandatory provisions (listed in Themes 1 – 7 below) without implementing any optional provisions (including optional scope exclusions in Themes 8-11).

The impact of implementing option 3 (only the mandatory provisions) have been assessed below.

- 6.6.1. Theme 1: mandatory measures to foster non-discriminatory access to rail-related services for all railway undertakings (Article 2.1, Article 13, Article 6, Article 31, Annex II, Article 36), classified in this document as 1A to 1I.

Additional obligations for operators of service facilities

1A Access to Annex II point 2 service facilities (Article 13)

The Directive requires “operators of service facilities” (which includes infrastructure managers where these are responsible for managing a service facility or supplying the relevant service) to supply in a non-discriminatory manner to all railway undertakings access, including track access, to a list of facilities listed in point 2 of Annex II, and to the services supplied in these facilities, where they exist. To this list has been added the following:

- a. travel information display and suitable location for ticketing services in passenger stations;
- b. shunting facilities in marshalling yards;
- c. maintenance facilities, with the exception of heavy maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities;
- d. other technical facilities, including cleaning and washing facilities;
- e. maritime and inland port facilities which are linked to rail activities;
- f. relief facilities;
- g. the supply of fuel in refuelling facilities in these facilities, charges for which shall be shown on the invoices separately.

1B Access to Annex II point 3 “additional services”

If the operator of the service facility provides any of the services listed in Annex II point 3, it must provide them in a non-discriminatory way to any railway undertaking which requests it. This now includes:

“Charges for traction current shall be shown on the invoices separately from charges for using the electrical supply equipment, without prejudice to the application of Directive 2009/72/EC.”

1C Access to new Annex II point 4 “ancillary services”

If the operator of the service facility provides any of the services listed in Annex II point 4 to any railway undertaking other than itself, it must provide these services to other railway undertakings that request them. These are known as ancillary services and now include:

- a. Ticketing services in passenger stations; and
- b. Heavy maintenance services supplied in maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities.

Costs and benefits of 1A to 1C

Where an operator of a service facility already provides these services to railway undertakings, the cost of adapting to these provisions should be negligible because a process for providing access to service facilities, and charging for them will already be in place.

Where these services do not already exist in service facilities, no action will be required by the operator of the service facility and not costs or benefits will accrue.

It is assumed that a benefit of providing these services will be an increase in revenue for the service facility operator.

There could be administrative costs for operators where they only operate one of the service facilities which have been added to the Directive, as they may not already have a process in place for providing access to the service, or charging for use of it. It is not yet clear if there are any operators who would be affected in this way.

(Consultees are invited to comment and submit evidence on whether any of the measures are likely to result in additional administrative costs and/or additional revenue.)

1D New obligations regarding refusal of access to Annex II point 2 service facilities and consequent appeals

There are new obligations for the operator of these service facilities in respect of these facilities:

- The operator is now required to answer requests for access within a reasonable time limit (Article 13.4) to be specified by the ORR.

- The wording describing the circumstances under which a request may be rejected has been slightly changed, from when “viable alternatives under market conditions exist” to when “there are viable alternatives allowing [the applicant] to operate the freight or passenger service concerned on the same or alternative route under economically acceptable conditions” (Article 13.4). ‘Viable alternative’ is defined as access to another service facility which is economically acceptable to the railway undertaking, and allows it to operate the service concerned (Article 3.10).

NB: The Directive also states that the operator is not required to make investments in resources or facilities in order to accommodate requests (Article 13.4).

- If conflicting requests for supply of services are received the operator must attempt to meet all such requests on the basis of the needs demonstrated (Article 13.5).

The Directive gives applicants the right to complain to the regulatory body where their request to access one of the facilities is rejected. The Regulatory Body is then required to examine the case and take action, where appropriate, to ensure the applicant is granted access to an appropriate part of the capacity (Article 13.5).

Costs and benefits of 1D

The costs which a facility operator could incur in becoming compliant with these obligations will depend on a number of factors including whether it is part of a group which also operates rail services; whether there is a “viable” alternative to which applicants may be directed; the likelihood of an access complaint made against the operator being upheld; the action taken by the regulatory body in the event of an access complaint, such as a direction to provide access; and the mitigating factors which regulatory body considers in such a complaint.

The greatest costs to a facility operator are likely to occur in the event of a successful access complaint based on the new requirements in Article 13.4-13.5. This could result in the regulatory body taking action to ensure that the appropriate part of the capacity is granted to the applicant. This might result in damages from breach of contract with incumbent service users, depending on the terms of current contracts. Even if an appeal were successful the overall impact on the income or expenditure of the operator is unclear because it could result in costs or savings for either party and would depend on individual circumstances. The service operator would be able to mitigate against potential costs going forward by seeking legal advice/appropriate insurance and contractual terms with service users. Potential costs could be particularly relevant, however, if freight operating companies have made investments in service facilities on the basis that they would serve certain operators and traffic flows, we expect to better understand the impact once responses to the public consultation have been received.

There are likely to be no transitional costs to the regulatory body (ORR) in setting up a facility access complaint system because such a system is already in place in GB. However the number of cases could increase because the Directive widens the rights of access compared with the current Railways Infrastructure (Access and Management) Regulations. It also widens the type and therefore number of facilities in scope of the Regulations. This could result in increased costs associated with preparing and analysing complaints for railway undertakings, infrastructure managers, service facilities operators and for the ORR. It is not possible at this stage to estimate the increase in the number of appeals or their complexity, nor is it possible to quantify their costs.

On the basis of responses received to the public consultation it may be possible to estimate the costs and benefits of this provision more accurately, including an estimate of monetised costs and benefits in GB.

(Consultees are invited to comment and submit evidence on the additional benefits/costs from the measures outlines above. As an example, evidence from freight operating companies to clarify whether any have made investments in service facilities on the basis they would serve certain operators.)

1E Obligations for a service facility operator of certain facilities where they are categorised as being dominant.

The operators of service facilities which are under direct or indirect control of a firm or body which is active and holds a dominant position in a national railway transport services market for which the facility is used now have to fulfil additional requirements for certain facilities. These facilities are passenger stations; freight terminals; marshalling yards/train formation facilities; storage sidings; maritime and inland port facilities; refuelling facilities and supply of fuel in these facilities (items (a), (b), (c), (d), (g), (i) of point 2 in Annex II).

If they are categorised as dominant the operator must:

- a. be organised in such a way that the management of service facilities is independent in organisational and decision-making terms (This is not a requirement for legal separation and can be fulfilled by the entity having distinct divisions).
- b. have separate accounts, including separate balance sheets and profit and loss accounts, for all service facilities referred to in point 2 of Annex II.
- c. justify any refusal of access in writing and indicate viable alternatives.

If the service facility is operated by an infrastructure manager or if the operator of such facility is under the direct or indirect control of an infrastructure manager, the requirements in a and b will be met if the essential functions of the infrastructure manager (allocation and charging) are entrusted to bodies or firms which do not provide rail transport services, in accordance with Article 7.

Costs and benefits of 1E

In relation to obligation (a) it is unclear whether any UK service facility operator currently would be categorised as under the direct or indirect control of a body or firm which is active and holds a dominant position in the national railway transport services market under this article (also referenced in recitals 6 and 26 of the Directive), but it appears unlikely, given the liberalised structure of the GB railway market - three rail freight railway undertakings operate service facilities and train services. Therefore costs and benefits are likely to be negligible to zero. The situation is similar in the passenger market where all franchised passenger operators lease and operate stations. However, evidence and views will be sought in the public consultation about whether any railway undertaking is in scope. Whether or not they are in scope will depend on the interpretation of “national rail transport services market” and “dominant”. The costs will depend on the current structure of the organisations in respect of the divisions responsible for service facilities and trains operation.

If a service facility operator was deemed to hold a “dominant position” in the market for which the facility is used, it would incur costs and an initial and recurring administrative burden if the terms of the new requirements obliged a company to restructure in order to comply with the organisational separation requirements. Greater internal management separation requirements within the service facility operator could also result in reduced efficiency and increased costs. However, the additional independence requirements imposed on the service facility operator when considering access requests could result in it accepting more requests, thereby incurring a benefit in terms of increased utilisation of a facility and in the freight moved. Wider economic benefits to the rail market could accrue because of greater competition and increased choice for customers of service facilities – it has not been possible to estimate these.

In relation to obligation (b) the new requirement for separate accounts cannot be analysed without information about whether any case exists where a service facility operator must take steps to meet this requirement.

In relation to obligation (c) the new requirement to justify any refusals of access in writing may incur costs to the extent that any relevant body caught under this Article is not already capable of doing so. The lack of currently available information on whether this is likely or not means that before consultation it is not possible to provide a useful estimate. It is likely that a reasonably well staffed and efficient business would be able to fulfil this requirement without incurring significant extra expense.

There are no anticipated costs for infrastructure managers because they already comply with the requirements of independence set out in Article 7.

(Consultees are invited to comment and submit evidence on the additional benefits/costs from the measures outlined above. As an example, evidence will be sought on whether any railway undertaking is likely to be in scope of this measure.)

1F Obligations on all operators of service facilities relating to charging

The Directive amends the criteria which facility operators can take into account when setting charges for access to service facilities and for the infrastructure connecting them:

- The charge imposed for track access within service facilities (point 2, Annex II) and the supply of services in such facilities shall not exceed the cost of providing it, plus a reasonable profit (Article 31.7). Previously the requirement was for the operator to take account of the competitive situation of rail transport when setting charges.

- The operator of a service facility must provide the regulatory body with necessary information on the charges imposed (Article 31.2). Previously this only applied to the infrastructure manager.
- The operator must use revenue from those charges to fund their business (Article 31.1). Previously this applied only to the infrastructure manager.

Costs and benefits of 1F

The provisions require the charges for a facility operator's services to be calculated on the basis of the costs of providing the service plus a reasonable profit. It is possible that this could reduce facility access revenue for facility operators. However, the definition of "cost" here is very broad, i.e. it is not limited to "cost directly incurred" and can therefore include elements of overhead absorption and investment cost recovery. Revenue is therefore only likely to be reduced if the operator is currently unable to demonstrate that its level of profit from operating the facility is reasonable.

In practical terms there may not be a significant difference between the existing pricing mechanism and that in the Directive. The Office of Rail Regulation already regulate access arrangements for stations. In terms of a service facility operator providing information to the regulatory body on the charges imposed, there may be administrative costs in collecting the appropriate information for the regulatory body, but these are expected to be negligible. However, they cannot be quantified because the level of cost would depend on the information required by the regulatory body at the time requested.

How service facility operators use the charges paid to them for the use of those facilities may be affected, depending on how those service facility operators currently use those funds, and whether this is assessed by the regulatory body as funding their business. This cannot be estimated until after consultation where more information will have been collected on how service facility operators currently use the revenue from the charges of those facilities which they operate.

(Consultees are invited to comment and submit evidence on the additional costs/benefits from these measures to help the department further qualify and quantify the impacts. As an example, evidence will be sought on how service facility operators currently use the revenue from the charges of those facilities which they operate.)

1G Requirement for operators of service facilities to advertise an unused annex II point 2 facility for lease or rent

Where a facility referred to in point 2 of Annex II has not been in use for at least two consecutive years, and a railway undertaking has expressed interest, on the basis of demonstrated needs, in access to the facility, the owner shall publicise the operation of the facility as being for lease or rent as a service facility, unless ongoing "reconversion" is demonstrated (Article 13.6). As "reconversion" is not an English term we have interpreted this as "ongoing building works" for the purpose of turning the facility into another type of service facility.

Costs and benefits of 1G

The obligation to advertise a facility for lease or rent if it has not been used for a particular period of time is likely to result in a cost for the facility owner associated with advertising that facility's availability and negotiation of a lease. However presumably the owners may in due course receive rental income in mitigation. There would presumably be no obligation to accept a lease offer which was not market value. It would be unlikely to result in the loss of a facility which may have been acquired with a view to expansion and serving future traffic flows where this requires building work. The owner would also have the option of meeting the request for services in the meantime. There are possible benefits if this provision results in more facilities being leased to third parties and becoming operational, or assuring that services are provided where they are capable of being provided. However, the level of demand for additional facilities is unclear making it impossible to estimate at this stage how many facilities would be reopened and the extent to which those reopened facilities would be used. We anticipate that responses received through the public consultation will give us a clearer understanding of how many service facility operators might fall under this and whether any railway undertakings would want to ask for access to these.

(Consultees are invited to comment and submit evidence on the additional costs/benefits from these measures to help the department further qualify and quantify the impacts.)

1H Railway undertakings to keep separate accounts for freight and passenger services

Railway undertakings which operate both rail freight and rail passenger services are now required to keep and publish separate profit and loss accounts and balance sheets for activities relating to freight and passenger transport services (Article 6.3).

Funds paid for activities relating to public service contracts have to be shown separately in the accounts and cannot be transferred to activities relating to the provision of other transport services or any other business.

Costs and benefits of 1H

The accounting separation provisions widen those already in place for infrastructure management and train operations. The affected railway undertakings would incur costs and an initial and recurring administrative burden through the new requirement.

Currently eight train operating companies hold both passenger and freight licences. However, it is not clear that all these operators currently operate both types of service. For example, at least three freight operating companies also operate passenger charter trains, for example providing traction for rail enthusiast heritage trains. These charter operations tend to be small scale so the requirement for accounting separation could represent an additional burden to these operators. In the absence of detailed knowledge of these operations or of the costs of producing an additional set of accounts it has not yet been possible to quantify these costs. Additional information about these will be sought in the public consultation document. The impact would also depend on whether the railway undertakings could be excluded from the scope of this requirement in accordance with the mandatory scope exclusions (more detail in section 6.6.7.)

1I Infrastructure managers must impose a levy for regularly unused train paths

Previously the levy of a charge in cases where capacity had been requested but not used was optional. This is still generally the case, however the Directive now adds that the levy of a non-usage charge on applicants which were allocated a train path is now mandatory in the event of their *regular failure* to use allocated paths or part of them. The criteria for application of this charge must now be published in the network statement by the infrastructure manager (Article 36)

Costs and Benefits of 1I

In the past GB infrastructure managers have not opted to apply this non-usage charge, therefore there are likely to be administrative costs both for the regulatory body and the infrastructure manager when determining the criteria for regular non-usage and in designing the process. The impact on railway undertakings will depend on how the concept of regular non-use is interpreted by the infrastructure manager and the ORR.

This could result in increased benefits for the infrastructure manager where in the past they have not been able to charge for non-use of the capacity which they have already allocated. It will also discourage railway undertakings from applying for capacity if they do not really need to use it, therefore preventing capacity from being allocated (and therefore unavailable to other applicants) unnecessarily.

(Consultees are invited to comment and submit evidence on the additional costs/benefits from these measures to help the department further qualify and quantify the impacts. As an example, evidence will be sought on whether infrastructure managers are likely to benefit from this or not)

6.6.2. Theme 2: mandatory measures to improve the transparency of rail market access conditions (Articles 31, 30, 32, 27, Annex VI), classified in this document as 2A – 2C.

2A Apportionment of costs by infrastructure managers (Article 30.8)

Infrastructure managers are now explicitly required to establish a method apportioning costs to the different categories of services offered to train operators. The method will have to be updated from time to time on the basis of best international practice.

Costs and benefits of 2A

Costs and benefits of this measure are likely to be negligible because GB Infrastructure managers already use methods of this sort to apportion costs to different categories of services.

(Consultees are invited to comment and submit evidence on the additional costs/benefits from these measures to help the department further qualify and quantify the impacts.)

2B Information in network statements (Article 27)

Infrastructure managers are required to make their Network Statement available through an online portal set up by EU infrastructure managers. The Network Statement is required to include the following new elements (see Annex IV and Article 27):

- information on or website links to information concerning conditions and charges for access to and supply of service facilities listed in point 2 of Annex II (Article 27.2)
- a reference to the infrastructure registers, which the statement must be consistent with;
- procedures to request information on scheduling maintenance work;
- the dispute resolution system;
- conditions by which account is taken utilisation in determining allocation priorities;
- a section on application for licences
- a model agreement for the conclusion for framework agreements.

The Directive requires the infrastructure manager's network statement to be published in at least 2 EU Member State languages. (Article 27.1)

The Regulatory Body is required to check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager which can be used to discriminate against applicants. (Article 56.2)

Costs and benefits of 2B

The requirement to translate network statements would result in HS1 and Network Rail incurring transitional and recurring policy costs. Eurotunnel's network statement is published in French as well as English and so would incur no additional cost.

From a quote provided to DfT in 2012, it is estimated that the translation into French of Network Rail's existing 80 page Network Statement document would cost under £10,000. HS1 would also need to translate its statement, which is shorter than that of NR. The one off cost of translating both network statements into another EU Member State language is likely to cost under £20,000 with a likely "refresh" each year assumed to cost around £10,000 total for all documents.

Benefits could arise because of the availability of the network statement in another language, such as increased competition on the network or increased utilisation of the network because of greater awareness of the services offered. However, given the widespread use and understanding of English as a business language in Western Europe it very unlikely that the absence of a network statement in another language is currently affecting levels of utilisation of Infrastructure Managers' networks and facilities. The benefits of this provision are therefore assumed to be negligible.

The inclusion of information about access to and charges for service facilities could result in greater utilisation of those service facilities, because of increased awareness that such facilities are available. This could result in benefits for operators of service facilities in the form of increased revenues. It could also result in policy benefits for train operators because greater knowledge of facilities available could result in them being able to run additional services. Wider economic benefits could also accrue from more efficient utilisation of existing service facilities. More efficient utilisation could also improve the competitiveness of rail compared to other modes of transport.

However, it could also result in an increase in requests for access to service facilities, not all of which could be met, which could in turn cause an increase in complaints to the ORR. ORR and the parties involved in the complaint would incur administrative costs from the complaint and decision process.

In the absence of data about current utilisation of service facilities, about the level of awareness by market participants of services available and about the level of any unsatisfied demand for services offered in service facilities it is not possible to quantify the costs or benefits of this measure at this stage. Further information about these points will be sought in the public consultation.

(Consultees are invited to comment and submit evidence on the additional costs/benefits from these measures. As an example we are not fully confident in the assumed one-off and recurring costs of translating the network statements, industry responses will be sought to obtain more robust qualitative and quantitative estimates.)

2C Mark ups: evaluation by Infrastructure managers of list of rail market segments (Article 32)

The Directive states that mark-ups may be levied "to obtain full recovery of the costs incurred by the infrastructure manager", "while guaranteeing optimal competitiveness of rail market segments". Previously the requirement was "while guaranteeing optimum competitiveness in particular of international rail freight". The market segments which must at least be considered by the infrastructure manager are now listed in Annex VI.1:

- Passenger vs freight services
- Trains carrying dangerous goods vs other freight trains
- Domestic vs international services
- Combined transport vs direct trains
- Urban or regional vs interurban passenger services
- Block trains vs single wagonload trains
- Regular vs occasional train services

As with previous legislation, the level of mark-ups must not exclude market segments which can pay at least the cost that is directly incurred plus a rate of return which the market can bear. The infrastructure manager is required to evaluate the relevance of mark-ups for different market segments considering at least the pairs listed in Annex VI and retaining the relevant ones. The list of market segments defined by infrastructure managers must contain at least the three following segments: freight services, passenger services within the framework of a public service contract and other passenger services.

Costs and benefits of 2C

There may be costs to the ORR and to all infrastructure managers (including HS1 and Eurotunnel) in evaluating the mandatory list of sectors to be considered for mark-up because this list is longer and of a different nature from that used in respect of the GB network. Finally additional track access charges could apply if some of the additional passenger and freight market sectors which are evaluated are determined to be “able to bear” additional track access charges arising from this measure. However the effect of this is not possible to calculate at this stage because it will depend on the sector involved and the assessment of its ability to pay additional charges. Further information about these points will be sought in the public consultation.

(Consultees are invited to comment and submit evidence on the additional costs/benefits from these measures to help the department further qualify and quantify the impacts.)

6.6.3. Theme 3: mandatory measures enhancing cross-border co-operation and coordination among regulatory bodies and cooperation between infrastructure managers (Article 57, Article 37, Article 14), classified in this document as 3A – 3C.

3A Cooperation: regulatory bodies

The ORR will be required to cooperate with regulatory bodies in other Member States (Article 57). Specifically, it will be required to:

- Participate in a network of regulatory bodies that convenes at regular intervals.
- Exchange information about the main issues of its procedures and of problems interpreting EU law.
- Co-operate for the purposes of mutual assistance in market monitoring, and handling of complaints and investigations.
- Consult with all other EU Member States through which a train path runs when investigating issues of access or charging on an international train path either because of a complaint or an own initiative investigation.

Costs and benefits of 3A

Costs and benefits are likely to be negligible because these provisions would formalise existing working practices. The ORR is already a member of the “Independent Regulators’ Group (IRG) – Rail”, a network of independent rail Regulatory Bodies from twenty-five European countries.

(Consultees are invited to comment and submit evidence on the additional costs/benefits from these measures to help the department further qualify and quantify the impacts.)

3B Cooperation: infrastructure managers

UK infrastructure managers will be required to cooperate with one another and with Infrastructure managers in other member states. Specifically, they will be required to establish appropriate procedures to:

- Co-operate with other infrastructure managers to enable the application of efficient charging schemes (Article 37.1)
- Co-ordinate with other infrastructure managers regarding the charging for train services which cross more than one network. (Article 37.1)
- Aim to guarantee the optimal competitiveness of international rail services and ensure the efficient use of railway networks. (Article 37.1)

They will also be required to:

- Co-operate with other Infrastructure managers to enable mark-ups and performance schemes to be efficiently applied to traffic crossing more than one network on the rail system. (Article 37.2)
- Publish in their network statements the principles and criteria for capacity allocation established with other infrastructure managers in respect of coordinating allocation decisions (Article 40.1)
- Provide sufficient information to the ORR and other Member States' regulatory bodies about the development of common principles and practices for the allocation of infrastructure and from IT-based allocation systems, to allow those bodies to perform regulatory supervision (Article 40.2)

Costs and benefits of 3B

These provisions would largely formalise the existing position under which infrastructure managers cooperate with their European counterparts on the allocation of and charging for international train paths. Costs should be negligible for Network Rail, HS1 and Eurotunnel, because they already cooperate with other infrastructure managers, e.g. through membership of Rail Net Europe (RNE) and of the European Rail Infrastructure Managers' association (EIM). The requirements to coordinate and cooperate with other infrastructure managers could increase the appeal periods and administrative burden on infrastructure managers and thus the costs of their activities, but the effect of these provisions in GB will be minimised by the fact that the number of international services is small in comparison with those on the domestic network. If infrastructure managers do not already provide and publish the principles and criteria specified in Article 40.1 and 40.2 there will be a small but ongoing cost to develop and publish these.

There could be benefits if greater cooperation between infrastructure managers results in more efficient or transparent charging schemes and in more efficient allocation processes. This could result in a reduction in costs for train operating companies. It could also result in an increase in services between GB and other Member States via the Channel Tunnel and France. However, Infrastructure managers are already required to cooperate with one another by existing legislation and there exists considerable spare capacity on routes to continental Europe. These provisions are therefore unlikely to result in any significant benefits in GB.

(Consultees are invited to comment and submit evidence on the additional costs/benefits from these measures to help the department further qualify and quantify the impacts. As an example it is not yet possible to quantify the ongoing costs for infrastructure, further information will be sought in the public consultation.)

3C Secretary of State must notify cross-border agreements

The Secretary of State is now required to ensure such agreements do not discriminate between railway undertakings or restrict their freedom to operate cross-border services. S/he will be required to notify the European Commission before concluding any new cross-border agreement with other Member States or amending any existing cross border agreement. The European Commission will decide whether such agreements are in compliance with Union law within 4 months of notification (Article 14)

Costs and benefits of 3C

GB has only one international rail link, for which an agreement, the Treaty of Canterbury, is already in place and which has already been submitted to the Commission, alongside the concession agreement for the Channel Tunnel. The administrative cost which DfT would incur in submitting a new or amended agreement would be small (of course, the making the amendment itself would probably be a resource-intensive process; but this is not a cost deriving from the Recast Directive or its implementation). At present there is no intention to amend the Treaty of Canterbury.

(Consultees are invited to comment and submit evidence on the additional costs/benefits from these measures to help the department further qualify and quantify the impacts)

6.6.4. Theme 4: mandatory measures relating to member state railway funding and development strategies, and incentives for cost reduction and development (Article 8, Article 30, Article 3, Article 32), classified in this document as 4A and 4B.

4A DfT/infrastructure manager obligations for infrastructure development strategy and contractual agreement

The DfT will be required to:

- Produce an indicative railway infrastructure development strategy for the whole of the UK to be published in 2019 and covering at least 5 years (Article 8.1).
- Ensure that there is a contractual agreement or an “arrangement within the framework of administrative measures” between the relevant competent authority and the infrastructure manager which incentivises the infrastructure manager to reduce costs and access charges. This shall be for not less than 5 years (Article 30.2). Previously the agreement had to cover not less than 3 years and regulatory measures could be used as an alternative.
- Ensure that the agreement or arrangement fulfils a list of parameters set out in Annex V of the Directive (Article 30.2)
- Consult applicants and potential applicants for the IM’s infrastructure about the contractual agreement before it is signed and publish the contractual agreement within one month of concluding it (Article 30.6)
- Ensure that under normal business conditions and over a reasonable period which shall not exceed a period of five years, the profit and loss accounts of an infrastructure manager shall at least balance income from infrastructure charges, surpluses from other commercial activities, non-refundable incomes from private sources and State funding on the one hand, including advance payments from the State, where appropriate, and infrastructure expenditure, on the other hand. However, the State may under some circumstances require the infrastructure manager to manage his accounts without State funding (Article 8.4).

The infrastructure Manager will be required to adopt and consult on business plan taking into account development strategy and available funding (Article 8.3) and making sure it is consistent with the contractual agreement (Article 30.6). It will also be required to develop and maintain a register of assets which will be used to assess the financing needed to repair or replace them (Article 7).

Costs and benefits of 4A

Costs and benefits will be negligible in respect of Network Rail, HS1 and Eurotunnel in GB because these proposals will, for the most part, formalise the existing position concerning infrastructure development strategies, funding and the contractual structure and asset registers. In respect of domestic networks, the requirement to consult applicants is already fulfilled by the ORR’s consultation prior to its final determination on Network Rail and HS1’s funding as part of the Periodic Review process. There may be some additional policy costs to Network Rail and Eurotunnel in consulting on its business plan and to the organisations responding to the consultation. We would expect these costs to be small but until responses have been received from the public consultation it is difficult to estimate.

(Consultees are invited to comment and submit evidence on the additional costs/benefits from these measures to help the department further qualify and quantify the impacts.)

4B ETCS-differentiated track access charges (Article 32.4)

Infrastructure charges on European Train Control System (ETCS) railway corridors specified in Commission Decision 2009/561/EC must be differentiated to give incentives to equip trains with European Train Control System (ETCS) signalling technology. The ETCS corridors to which differentiated charging will apply are now listed in Commission Decision 2012/88/EU which repealed Commission Decision 2009/561/EU. There are no corridors in the UK.

The Directive also states that the European Commission must adopt implementing measures setting out “modalities” in applying the differentiation of the infrastructure charge. The methodology must not result in the undue distortion of competition between railway undertakings or affect the overall competitiveness of the rail sector.

Costs and benefits of 4B

As there are no ETCS/ERTMS corridors in the UK this track access charge will not have an impact on railway undertakings operating in the UK.

The UK is participating in the comitology process to develop the Implementing Act; however, as this will have direct effect and no proposal has yet been published by the European Commission, it is not considered further here.

6.6.5. Theme 5: mandatory measures enhancing regulatory body competences, independence and powers (Article 55, Article 56), classified in this document as 5A and 5B.

5A More independence of the Regulatory Body

- The Directive requires there to be a single regulatory body to be independent from any other public or private entity (including Government). Member States are required to ensure that the regulatory body is staffed and managed in a way that guarantees its independence.
- Persons in charge of appeals decisions to be taken by the regulatory body must be appointed under clear and transparent rules which guarantee their independence by the national cabinet or council of ministers or by any other public authority which does not directly exert ownership rights over regulated undertakings. Member States must decide whether these persons are appointed for a fixed and renewable term, or on a permanent basis which only allows dismissal for disciplinary reasons not related to their decision-making. They shall be selected in a transparent procedure on the basis of their merit, including appropriate competence and relevant experience, preferably in the field of railways or other network industries.
- Member States must ensure that those persons act independently from any market interest related to the railway sector, and they must not have any interest or business relationship with any of the regulated undertakings or entities, and must not seek or take instructions from any government or other public or private entity when carrying out the functions of the regulatory body.
- To this end those persons must make an annual declaration of direct or indirect interests that could be considered prejudicial to their independence and which could influence the performance of a function. Persons in charge of decisions to be taken by the regulatory body must withdraw from the decision-making process if it concerns an undertaking with which they had a direct or indirect relation during the year before the launch of a procedure.
- After their term in the regulatory body, these persons must not hold any professional position or have any responsibility at any of the regulated undertakings or entities for a period of at least one year.

Costs and benefits of 5A

The costs of the independence provisions will be negligible in respect of the Office of Rail Regulation because they are consistent with the existing UK legislation concerning regulatory independence, powers and organisational capacity.

The requirements related to the appointment of persons taking appeals decisions for the ORR will result in no costs for the DfT or for ORR as the existing process for the appointment of the executive board at ORR is already transparent and consistent with the requirements of the Directive.

Procedures will need to be updated to comply with the requirements for ORR staff to declare interests and not to hold positions in regulated undertakings one year after leaving the ORR. However, it is anticipated that the administrative costs associated with these measures will be negligible.

(Consultees are invited to comment and submit evidence on the additional costs/benefits from these measures to help the department further qualify and quantify the impacts.)

5B Expanded responsibilities of the regulatory body

- The Regulatory body is given powers to monitor the “competitive situation” in the rail services market, including on its own initiative and must “control” the following:
 - the network statement and the criteria set out in it
 - the allocation proceeds and its result
 - the charging scheme
 - the level or structure of infrastructure charges
 - arrangements for access
 - access to and charging for services

and check whether the network statements have any discriminatory clauses in them or create powers that may be used to discriminate (article 56.2)

- The regulatory body must also be granted powers to carry out audits or to initiate external audits of Infrastructure managers operators of service facilities and, where relevant, railway undertakings, to verify compliance with accounting separation provisions and is given power to request information listed in Annex VIII for this purpose It may draw conclusions from the accounts about state aid issues. This is without prejudice to the powers of national authorities responsible for state aid issues. If it draws conclusions about state aid it must report those conclusions to those authorities. All bodies must provide accounting information requested by the Regulatory Body.
- The Regulatory Body is also required to cooperate with the national safety and licensing authorities (article 56.3).
- At a minimum every two years the regulatory body is also required to regularly consult representatives of users of the rail freight and passenger transport services, to take into account their views on the rail market (Article 56.7)
- There are new requirements governing how the regulatory body must process appeals and requests for information:
 - When the Regulatory body requests information from the IM, applicants or any third party involved, it must follow the procedure set out in Article 56.8 and is given the power to enforce requests of this sort.
 - If it receives a complaint, the Regulatory body must consider it using the decision making procedure set out in Article 56.9 of the Directive. This is without prejudice to the powers of national competition authorities in respect of competition in the railway market. The Regulatory body’s decision is binding on all parties and cannot be overruled by another administrative body. It should be granted appropriate powers to enforce its decisions. However, its decisions must also be subject to judicial review. Making a judicial review appeal may have the effect of suspending the regulatory body’s decision only when the immediate effect of that decision would cause irretrievable or manifestly excessive damages for the appellant. This provision is without prejudice to the powers of the court hearing the appeal as

conferred by constitutional law, where applicable. The Regulatory body's decisions must be published.

- When deciding if the economic equilibrium of a public service contract would be compromised by an international service, the regulatory body is required, as appropriate, to ask for such information, consult relevant parties within a month of receipt of the relevant request. It must decide within at least 6 weeks of receipt of the relevant information (Article 11.2). The Commission is to adopt by 16 December 2016 measures setting out details of the procedure and criteria to be followed for the application of this provisions relating the making of these decisions, and for the provisions relating to the limitation of Member States of access on services on lines covered by public service contracts. (Article 11.4)

Costs and benefits of 5B

The policy costs of these provisions are likely to be negligible in respect of the Office of Rail Regulation and regulated undertakings because they are consistent with the existing UK legislation and practice concerning the responsibilities of the Regulatory Body. Similarly it is not expected that any additional benefits will accrue as a result of these provisions.

The change of scope of a regulatory body's powers to allow it to carry out /initiate audits on facility operators to verify compliance with accounting separation provisions in respect of passenger and freight operations could result in additional costs for any railways undertakings which operate both types of service. However, it is not possible to quantify the costs because they will only be incurred if railway undertakings are in scope of this provision and if the ORR decides to undertake an audit.

In respect of cooperation with the Licensing and Safety authority, the ORR is the authority for both these areas in GB so no further costs will be incurred. In respect of the Channel Tunnel, the IGC will continue to act as the Safety Authority therefore the ORR will need to ensure co-operation with IGC in respect of safety. The impact here is likely to be low, because, in particular, the ORR will continue to be represented on the IGC.

(Consultees are invited to comment and submit evidence on the additional costs/benefits from these measures to help the department further qualify and quantify the impacts.)

6.6.6. Theme 6: mandatory measures relating to amendments to licensing regulations (Article 22).

Changes to licensing requirements

Chapter III of the directive contains obligations in relation to licensing, which now include the following changes:

- The Licensing authority is not to consider an undertaking to be financially fit if considerable "or recurrent" tax or social service arrears are owed.
- Article 22 (covering requirements relating to cover for civil liability) now permits the licensing authority to take into account the "specificities and the risk-profile of different types of services, in particular of railway operations for cultural and heritage purposes". It also changes the requirement in relation to the alternatives which a railway undertaking can have instead of insurance. The undertaking is now required to have "adequate guarantees under market conditions for cover", whereas previously it was required to "make equivalent arrangements for cover".
- Article 2.3 requires that if a licencing authority reviews compliance with requirements, the review is to be carried out at least every five years.

Costs and benefits

The costs will be negligible in respect of the GB rail network because they are consistent with existing UK practice concerning railway insurance and licensing requirements.

Railway Undertakings operating on the GB mainline railway normally need an operators' licence as part of their operational certification. Non-mainline operators do not normally need to be licensed so would be likely to qualify for a licence exemption.

6.6.7. Theme 7: mandatory measures relating to scope exclusions (Article 2) classified as 7A and 7B in this document.

7A Exclusion for local (etc) services

Article 2.1 of the Directive excludes from the application of Chapter II certain railway undertakings.

Chapter II provisions broadly comprise obligations relating to management independence of railway undertakings from infrastructure managers; the management of railway undertakings according to commercial principles; the separation of accounts of transport services and infrastructure manager businesses; the keeping of separate accounts relating to freight and passenger services; ensuring that essential functions are provided by bodies that do not provide rail transport services; the rights of access infrastructure by railway undertakings and the limitations on such rights; levies on passenger services; conditions of access to services; Member States obligations relating to cross border agreements; and the monitoring tasks of the Commission.

The previous EU legislation exempted “...*Railway undertakings whose activity is limited to the provision of solely urban, suburban or regional services* “. The Directive exempts “*railway undertakings which only operate urban, suburban or regional services on local and regional stand-alone networks, for transport services on railway infrastructure or on networks intended only for the operation of urban or suburban rail services*”.

Notwithstanding the above, when a railway undertaking is under the control of another undertaking or entity performing or integrating rail transport services (other than urban, suburban or regional services) Articles 4, 5 and 6 must be complied with. These requirements include broadly (a) the separation of the infrastructure manager and railway undertaking where the former controls or owns the latter; (b) for the railway undertaking to be operated under commercial conditions; and (c) for separate accounts to be kept for transport services and infrastructure manager services, as well as for freight and passenger transport services (with regard to the relationship between the railway undertaking and the controlling entity).

Costs and benefits of 7A

The policy costs of the mandatory scope exclusions from Chapter II are expected be negligible in respect of the urban or suburban railway undertakings and networks to which they apply because they are very largely aligned with scope exclusions for the operation of rail services in the existing GB legislation.

7B Exclusion for undertakings providing shuttle services through undersea tunnels

In addition, the Directive as a whole is now not applicable to “*undertakings the business of which is limited to providing solely shuttle services for road vehicles through undersea tunnels or to transport operations in the form of shuttle services for road vehicles through such tunnels except Article 6(1) and (4) and Articles 10, 11, 12 and 28* “

Previously Directive 1991/440 (which included provisions relating to the equivalent of Chapter II) excluded “*Undertakings the train operations of which are limited to providing solely shuttle services for road vehicles through the Channel Tunnel*” except for provisions relating to separation between infrastructure management and transport operations; railway undertakings rights to capacity on the infrastructure and services, levies.

The same operations were excluded from the scope Directive 2001/14/EC, which included provisions on allocation of capacity and charging and from Directive 95/18/EC, which dealt with licenses.

The only difference is that “transport operations” in the form of shuttle services through undersea tunnels have been expressly added to the exemption.

The provisions which remain applicable (A 6(1) (4), 10, 11, 12 and 28) are broadly the same, although changes to these articles will now apply to the relevant operations and undertakings.

Costs and benefits of 7B

7B The mandatory scope exclusions and inclusions relating to undersea tunnels is not likely to impact the Channel Tunnel, because although the wording has been amended, the effect remains the same. Therefore no further analysis has been undertaken for this provision.

6.7. Option 4 (preferred option): Amend the 2005 Regulations to (a) implement the new mandatory provisions (Themes 1 - 7); and (b) and implement all optional provisions which reduce burdens in UK (Themes 8 and 9)

In addition to the costs and benefits that have been identified in option 3, implementing the proposed optional provisions (Theme 8 and 9) will afford further flexibility as analysed below.

6.7.1. Theme 8: option to dis-apply ETCS differentiated charging where only ETCS trains run, (Article 32.4).

This optional provision is linked to Theme 4 and extends flexibilities afforded Member States. This provision allows Member States to decide whether or not to apply the differentiation charges to ETCS corridors specified in Decision 2009/561/EC on which only ETCS-equipped trains can run.

Costs and benefits

This provision offers Member States flexibility in deciding not to apply an ETCS-differentiated charging to lines on ETCS corridors if only ETCS-equipped trains can run on those corridors.

Costs and benefits associated with not applying such charges will not be applicable as there are no corridors in the UK.

6.7.2. Theme 9: option to take risk profile into account in determining insurance requirements for a licence (Article 22).

This provision gives Member States the option of taking the risk profile of different types of rail services into account in determining insurance requirements for railway undertakings.

Costs and benefits

The costs and benefits of this provision will be negligible because it will formalise the existing position concerning current licencing requirements of the Office of Rail Regulation (the GB body which grants licences and licencing exemptions) which allow licence applicants to apply for variations in third party insurance cover on the basis of a number of factors including the risk profile of their operation.

6.8. Option 5: Amend the 2005 Regulations to implement in accordance with option 4, but implementing all optional provisions (including those listed in theme 10 which goes beyond a minimum or copy out approach and does not offer the best value for money overall).

In addition to the costs and benefits of options 3 and 4, the costs and benefits of implementing the remaining optional provision in Theme 10 has been assessed below.

Theme 10: option to extend ETCS-differentiated charging beyond ETCS corridors

This provision also allows Member States to extend the differentiation to railways lines which were not specified in Commission Decision 2009/561/EC (Article 32.4)

Costs and benefits

The GB deployment plan for ETCS/ERTMS does not envisage the use of differentiated track access charges. This provision would therefore not be used and no significant costs or benefits would arise. However, by including an option which is not likely to apply, businesses and public authorities could incur some additional transitional costs in interpreting these provisions although they will have no practical impact.

7. Risks and assumptions

7.1. Risks

EU Implementing Acts/Delegated Acts made by the Commission under the Directive are likely to result in significant costs or benefits. These implementing measures are being developed by a

different process (comitology involving the European Commission and Member States) and to different timescales from implementation of the Directive itself in GB. To mitigate this risk the DfT is seeking evidence from industry bodies and the ORR on the areas covered by these implementing measures during the comitology process. This will enable DfT to better understand the impact of draft implementing measures and to negotiate effectively to ensure the best possible outcome for the UK.

7.2. Assumptions

We have made a number of assumptions:

- We have assumed that the regulatory assessment of what “market can bear” in respect of the mark-up process is an accurate reflection of the effects of the measure of the rail market concerned.
- We have assumed that the phrase “modalities” that is used in a number of provisions including those relating to direct costs in Article 31, Para 3 is broadly equivalent to the term methodology in English.
- We have assumed that at the time we implement the Directive, UK legislation is in effect which brings the Channel Tunnel infrastructure, infrastructure manager and services and operators (to the extent that they are not exempt) within the application of the 2005 regulations.
- We have assumed that both the existing GB funding and regulatory structure and that of the Channel Tunnel is compatible with new regulations, in particular the requirement to have a contractual agreement (as defined) in place fulfilling the requirements of Annex V of the Directive; and that the government funding requirements and rail access charges would be no higher than is the case at present.
- We have assumed that existing provisions in respect to all infrastructure managers comply with the requirements for cost reduction and other infrastructure manager incentives.
- We have assumed that we will not, in the approach under consideration, be seeking also to implement any part of the Directive for Northern Ireland, which has competence for its implementation, and that the Northern Ireland Executive (NIE) will have done so itself, or that we will, under separate legislation implement any provisions we are called on to implement and have agreed with the NIE.

8. Direct costs and benefits to business calculations (following OITO methodology)

One-in, Two-out

This IA is not in the scope of OITO as it relates to the implementation of an EU directive, and takes account of the derogations.

According to the Better Regulation Framework Manual (July 2013) an impact assessment is out of scope of OITO if it is implementing an EU regulation, Decision or Directive, except when:

- Gold-plating: if you are implementing an EU Directive that goes beyond the minimum requirements, resulting in increased costs to business;
- Failure to derogate: if you are introducing or recasting an EU Directive that (i) fails to take available derogations which would reduce costs to business or (ii) uses a derogation which imposes increased costs on business;
- Early implementation of an EU directive.

This impact assessment outlines the minimum mandatory requirements as well as a set of optional provisions.

Our preferred option is the implementation of the minimum requirements as well as those optional provisions which provides greater flexibility to businesses, thereby taking advantage of a derogation which reduces the costs to business.

The costs and benefits to businesses could not be monetised in this pre-consultation IA due to the lack of available evidence, the monetisation will be reconsidered after the public consultation.

9. Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

This is a specialist rail sector policy which is applicable to stakeholders in the rail industry but also owners, operators and customers of service facilities connected to the rail sector. Overall, the policy is not novel or contentious, because the principles of fair and non-discriminatory access have underpinned the UK rail industry structure since privatisation twenty years ago.

It is expected that the impact will be limited to parties in the rail sector, which are generally members of industry associations, with whom DfT has already been working to raise awareness of these changes. DfT has frequent contact with those industry associations and has used this to inform the level of analysis in this assessment, for example by focusing on the provisions related to access to service facilities which informal consultation suggest are likely to have the greatest impact on the industry.

The service facilities sector is more diverse and possibly more fragmented. DfT is therefore working with representative bodies for this sector in order to raise awareness of the changes and to seek further information. In advance of and during public consultation DfT plans to hold targeted workshops to raise awareness of the issues, seek further evidence and thereby deepen the level of analysis of the impact on service facilities.

The approach to this assessment has been considered appropriate to the costs imposed on businesses in this specialist sector. The level of analysis is in line with the depth of available information, which in some cases will not bear meaningful scrutiny until after the consultation.

9.1. Wider Impacts

9.1.1. Equalities Assessment

We consider that the proposals will have no specific impact on the following:

- Social, wellbeing or health inequalities;
- The level of crime;
- Levels of skills and education
- Human rights and;
- Responsibilities under the Equality Act 2010 – we have considered the impact on groups with protected characteristics under the Equality Act 2010 and have identified no impact

We have not identified any specific regional or local effects of this proposal or of any cases which would have specific rural or urban consequences.

(We welcome any further evidence/comments from consultees relating to the equalities assessment.)

9.1.2. Environmental

Environmental benefits would normally flow from more use of rail freight if it reflected transfer from road, but in this case it is difficult to predict whether there will be any increase. It is unclear how much will change as a result of changing the access appeal criteria in respect of facilities, requiring service facility operators that are under the direct or indirect control of a body/firm which is active and holds a dominant position in the national railway market transport services to have separate accounts and requiring facility operators to put facility access information on the infrastructure manager's network statement. In principle, better market operation might lead to more competition and reduced costs to customers. Those who responded to both the Office of Rail Regulation's freight sites market study of May 2011 and that held by DfT agreed that opening up access to such facilities should have a positive effect.

Further evidence and views from stakeholders that are submitted as part of the consultation process will help identify any environmental impacts.

(We welcome evidence from consultees on this issue.)

9.1.3. Competition Assessment

The proposed legislation will not directly or indirectly limit the number of competitors in the rail freight market, nor will it reduce firms' incentives or ability to compete vigorously.

The passenger train operating sector is characterised by competition across an international field of owning groups. There are currently over 20 firms operating passenger services in GB. The GB freight market is primarily served by the road haulage sector, with rail freight accounting for only 9% of total tonne kms moved. The GB rail freight market is dominated by a few large firms, with a number of smaller, but growing other firms.

The Directive applies to all EU Member States and therefore should not affect the relative position of companies in comparable businesses within the EU, and should not put GB rail industry at a competitive disadvantage.

In principle the implementation of the Directives aims to promote a more level playing field for all participants; but the already liberalised regime means the additional benefit will be limited. Evidence and views from stakeholders that are submitted as part of the consultation process will help identify any competition impacts.

(We welcome evidence from consultees on this issue.)

9.1.4. Small and Micro Businesses Assessment

It is likely that small and micro businesses are in scope of some of the changes which are brought about by the Directive, particularly service facility operators and smaller freight operators. The impact to small and micro businesses will be the same as already assessed in the main body of the impact assessment and we do not think that they will be disproportionately affected. We have noted the mandatory provisions which small and micro businesses are likely to be in scope of below, however we cannot assess the full impact on these businesses until we have received the public consultation responses.

Small and micro businesses are like to be in scope of:

Theme 1: 1A – 1C (additional service facilities added to Annex II), 1D (new obligations for refusal of access to service facilities), 1F (obligations for service facility operators in relations to charging), 1G (advertise an unused service facility for lease), 1H (separate accounts for railway undertakings that operate both passenger and freight), 1I (mandatory levy on railway undertakings for regularly unused train paths).

Theme 2: 2B (information in network statements).

After public consultation we will be able to estimate with greater confidence how many small and micro businesses will be affected and in what way. We may be able to adjust mitigations more specifically, but are ultimately constrained by the requirements of the Directive. Mitigations currently being considered are as follows:

- Activities to raise awareness—workshops with stakeholders, including small and micro businesses, are planned both during and after consultation which will provide an opportunity to ask questions and discuss impacts with the Department. We will also contact all licenced railway undertakings and service facility operators (where we know of them) individually to inform them of the consultation and give them the opportunity to contact DfT directly. We will also be contacting railway undertakings and service facility operators through several representative bodies, such as the Rail Delivery Group (RDG), Freight on Rail, the Freight Transport Association (FTA) and the Rail Freight Group (RFG).
- Guidance – the Office of Rail Regulation will be publishing guidance on the new UK Regulations.

10. Summary and preferred option with description of implementation plan

A summary of options 1 – 3 and option 5 and the reasons these have not been chosen has already been given in section 5.

Preferred option: Option 4 - Amend the 2005 Regulations to (a) implement the new mandatory provisions (Themes 1 - 7); and (b) and implement all optional provisions which reduce burdens in UK (Themes 8 and 9)

By implementing the mandatory provisions and taking advantage of optional provisions which reduce costs or increase benefits, the UK will avoid gold-plating and manage the risk of infraction.

Many of the provisions are in line with existing UK policy and therefore the costs and benefits to industry and other organisations are likely to be low. Due to the lack of data available it has not been possible to undertake a quantitative assessment of the impact of each of the provisions. We expect to be able to undertake further analysis of the impact using information gathered as part of the consultation.

After the consultation period has concluded, where necessary, this impact assessment will be modified on the basis of the consultation responses received.

The final stage Impact Assessment will set out more information on the implementation plan for the chosen option.

Summary of European Commission Impact Assessment

Alongside their proposal for a Directive, the European Commission produced an impact assessment covering the application of their proposal in the EU.

Category	Type of impact	Sub-Type of impact	Effect
Economic	Competition and opening of the rail market	Modal Share of Rail Transport	Stabilisation at 2015/16 levels (around 16%)
	New entrants in the rail market	New Entrants in the rail freight market	+ 3-4%
	Market share of new entrants in the rail market	Market share of new entrants in the rail freight market	+2-3%
	Cost of transport	Average operating costs for railway undertakings	-6%
	Administrative costs	Administrative costs for EU and Member States and for the railway sector	Close to 28M€/year
Social	Employment	Employment within the rail industry	1.7M working hours
	Working conditions	Education and mobility of workers in the rail sector	Increased
Environmental	Environmental	Local Air Quality	Up to 4.5000t of NOx and 100t of PM saved every year
		Noise Emissions	0.2M€ of additional external cost
		Climate Change	Up to 530kt of CO2 saved
		Energy Consumption	Up to 120M€ of energy consumption saved

The conclusions of the European Commission's impact assessment are summarised above. Although this provides useful information concerning the EU wide costs and benefits of the proposed measures we do not consider that they are directly comparable to the GB situation. They are based on the assumption that all re-cast measures will be new to Member States, whereas many (including the UK) included facility access appeals in the transposition of the original Directive and some (again including the UK) have introduced rail funding measures and independent regulators as part their own rail legislation.

NB: This table gives an overview of the changes and to understand the full detail of each change should be read in conjunction with section 6.

Theme	Mandatory / Optional	Summary of change	Estimated Cost Scale (£)	Benefit	Impacted parties
1 (1A, 1B and 1C)	Mandatory	Additional service facilities have been added to Annex II paragraphs 2, 3 and 4.	0 – 5000.00	Increased revenue for operators of service facilities that can now provide and charge for the added services.	Operators of service facilities.
1D	Mandatory	Additional requirements placed upon a service facility operator where they refuse an access request to a service facility which they operate.	Unable to quantify pre-consultation	Increased access rights for railway undertakings requiring access to service facilities.	Operators of service facilities, applicants.
1E	Mandatory	Additional obligations for a service facility operator that is also considered to hold a dominant position in the national railway transport services market.	0 – 5000.00	Increased transparency for railway undertakings where their competitors also manage service facilities.	Operators of service facilities.
1F	Mandatory	The criteria which service facility operators can take into account when setting charges for access to service facilities and for the infrastructure connecting them has been amended by the Directive.	Unable to quantify pre-consultation	Benefits may include the increase of investment into service facilities not owned by the infrastructure manager. Consultation responses will shed more light on the likely benefits.	Operators of service facilities, applicants.
1G	Mandatory	Adds the requirement for a service facility operator to advertise a service facility from Annex II para 2 for lease or rent where it has not been used for at least 2 consecutive years.	Unable to quantify pre-consultation	Possible increase in service facilities being leased by a third party on becoming operational.	Operators of service facilities, applicants.
1H	Mandatory	The Directive now requires railway undertakings which operate both rail freight and rail passenger services to keep separate profit and loss accounts for each of	Unable to quantify pre-consultation	No known benefits.	Railway undertakings

		these services.			
1I	Mandatory	The Directive amends the levy of an optional non-usage charge on applicants which were allocated a train path to mandatory in the event of their <i>regular failure</i> to use allocated paths or part of them. The criteria for the application of this charge must be published in the network statements.	Unable to quantify pre-consultation	Possible increase in revenue for the infrastructure manager	Regulatory body, applicants for infrastructure.
2A	Mandatory	Infrastructure managers are now explicitly required to establish a method apportioning costs to the <i>different categories</i> of services offered to train operators.	0	No known benefits.	Infrastructure managers
2B	Mandatory	The Network Statement must now be published on an online portal, be published in at least 2 EU languages, and be subject to scrutiny by the Regulatory Body for discriminatory clauses. It is also now required to include an additional 7 elements.	Initial 20,000.00 with an annual 10,000.00	Possible increase in the use of service facilities and therefore increase in revenue for infrastructure managers and service facility operators.	All stakeholders
2C	Mandatory	The Directive states that mark-ups may be levied “to obtain full recovery of the costs incurred by the infrastructure manager”, “while guaranteeing optimal competitiveness of rail market segments”. Previously the requirement was “while guaranteeing optimum competitiveness in particular of international rail freight”. The infrastructure manager is required to evaluate the relevance of mark-ups for different market segments considering at least the pairs listed in Annex VI and retaining the relevant ones.	Unable to quantify pre-consultation	Possible increase in revenue for the infrastructure manager depending on how the revised list of market segment is considered.	All stakeholders
3A	Mandatory	The ORR will be required to cooperate with regulatory bodies in other Member States.	0	Mandatory co-operation from other Member States could lead to reduced discrimination for RU’s wishing to operate in other	Regulatory body

				Member States.	
3B	Mandatory	UK infrastructure managers will be required to cooperate with one another and with Infrastructure managers in other member states. Specifically in areas of charging, performance, and capacity allocation.	0 – 5000.00	Possible increased efficiencies in charging schemes could result in reduced costs for railway undertakings.	Infrastructure managers
3C	Mandatory	The Secretary of State is now required to ensure such agreements do not discriminate between railway undertakings or restrict their freedom to operate cross-border services. S/he will be required to notify the European Commission before concluding any new cross border agreement with other Member States or amending any existing cross border agreement.	0	No known benefits.	Dept for Transport
4A	Mandatory	There are new obligations for Dept for Transport and infrastructure managers to have in place an infrastructure development strategy and contractual agreement.	0-15,000.00	No known benefits.	Dept for Transport, Infrastructure managers
4B	Mandatory	Infrastructure charges on European Train Control System (ETCS) railway corridors specified in Commission Decision 2009/561/EC must be differentiated to give incentives to equip trains with European Train Control System (ETCS) signalling technology. There are no corridors in the UK.	0	No known benefits.	Railway undertakings wishing to operate internationally may be affected by this.
5A	Mandatory	Additional requirements have been added to ensure the independence of the regulatory body from Government, infrastructure managers and railway undertakings.	0 – 5000.00	Increased independence of RB in other MS where they are currently not independent could result in reduced discriminatory behaviours.	Regulatory body
5B	Mandatory	Additional powers have been added to give the regulatory body more	0 – 5000.00	Increased powers of RB in other MS	Regulatory body, railway undertakings

		responsibilities to ensure non-discriminatory behaviour, competitiveness in the market, co-operation with safety authorities and an amended process for appeals and information requests.		which they do not currently have could result in reduced discriminatory behaviours.	
6	Mandatory	Minor changes to the requirements for the licencing of a railway undertaking.	0 – 5000.00	No known benefits.	Railway undertakings
7A	Mandatory	The Directive allows certain railway undertakings to be excluded from Chapter II. Those railway undertakings are: railway undertakings which only operate urban, suburban or regional services on local and regional stand-alone networks, for transport services on railway infrastructure or on networks intended only for the operation of urban or suburban rail services.	0	Reduces the burden for certain railway undertakings where they are excluded from certain parts of the Directive.	Railway undertakings
7B	Mandatory	the Directive as a whole is now not applicable to “undertakings the business of which is limited to providing solely shuttle services for road vehicles through undersea tunnels or to transport operations in the form of shuttle services for road vehicles through such tunnels except Article 6(1) and (4) and Articles 10, 11, 12 and 28.	0	Reduces the burden for certain railway undertakings where they are excluded from certain parts of the Directive.	Eurotunnel
8	Optional	The Directive allows Member States to decide whether or not to apply the differentiation charges to ETCS corridors specified in Decision 2009/561/EC on which only ETCS-equipped trains can run.	0	No known benefits as there are no ETCS corridors in the UK.	Railway undertakings, infrastructure managers
9	Optional	The Directive gives Member States the option of taking the risk profile of different types of rail services into account in determining insurance requirements for railway undertakings.	0	Allows Member States a certain amount of flexibility.	Railway undertakings, licensing authority (ORR)

10	Optional	The Directive allows Member States to extend ETCS-differentiated charging beyond ETCS corridors to railways lines which were not specified in Commission Decision 2009/561/EC.	0-10,000.00 (transitional costs for businesses in the interpretation of this requirement.	No known benefits	All stakeholders

Implementing Act	Directive Reference	Description	Timing
Licensing of applicants	Art 17 (5)	Deals with financial guarantees, which can be requested by the infrastructure manager from railway undertakings and other entities who apply for capacity on the network.	16/06/2015
Criteria for applicants for rail infrastructure capacity http://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:32014R0870&qid=1416583035954&rid=3	Art 41 (3)	This Act deals with the process and criteria to which the Infrastructure Manager must adhere when dealing with applications for capacity. An applicant for capacity can be a railway undertaking (RU) but also any other legal entity, such as shippers, freight forwarders and combined transport operators. Given that the licensing process already deals with an RU's financial fitness, the financial guarantees dealt with in this Act are particularly relevant for other types of applicant.	16/06/2015
New rail passenger services http://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:32014R0869&qid=1416583035954&rid=2	Art 10 (4)	Contains details of the tests to be applied when determining whether an international passenger service is: <ul style="list-style-type: none"> • Really international or actually national in purpose. • Disruptive to the economic equilibrium of a public service contract. 	16/06/2015
Criteria and procedure for framework agreements	Art 42 (8)	Sets out details of the criteria to be used when approving a framework agreement, and co-ordination of new requests and pre-existing agreements.	16/06/2015
Modalities for the calculation of direct costs	Art 31 (3)	Sets out the principles for the calculation of the cost that is directly incurred as a result of operating the train.	By 16/06/2015
Rail Market Monitoring Study	Art 15 (6)	Sets out measures to ensure consistency in the reporting obligations of member states to allow the Commission to monitor the use of the networks and the evolution of the internal rail market, in particular infrastructure charging, capacity allocation, investment, price development and rail transport services quality; services covered by PSO's licensing and the degree of market opening.	
ETCS modulation (TAC ERTMS)	Art 32 (4)	Sets out the modalities to be followed in applying the ETCS differentiated infrastructure charging.	
Noise differentiated access charges	Art 31 (5)	Measures setting out the modalities to be followed for the application of charging for the cost of noise effects.	
Access to Service facilities and to services	Art 13 (9)	Sets out the procedure and criteria to be followed for access to the service facilities referred to in point 2, 3 and 4 of Annex II of the Directive.	
Levy on Passenger Railway	Art 12 (5)	Sets out the details on the procedure and criteria to be followed for the application of the	

undertakings		levy on passenger railway undertakings which is intended to compensate the authority for the	