

Summary Report on the Post Implementation Review of the Railways (Interoperability) Regulations 2011

Introduction

1. A statutory review of the Railways (Interoperability) Regulations 2011 (RIR 2011) was carried out by DfT in the autumn of 2016. This report summarises the purpose of the review and its key findings. The review has been assessed by the Regulatory Policy Committee as “fit for purpose” and is attached to this report.
2. RIR 2011 amended the UK’s interoperability regime under the 2006 Railways (Interoperability) Regulations in order to transpose the 2008 Interoperability Directive. In line with the provision in the regulations the review exercise considered the impacts of the whole of RIR 2011 and not just the changes that were introduced to the domestic regime.
3. A light touch review was considered to be appropriate as the review is being carried out five years from the date the regulations came into force. However, the benefits identified in the impact assessment were estimated over a ten year period and were not expected to have fully materialised at this halfway stage. The review also proved very timely as a means to identify some opportunities that the UK’s exit from the EU could bring to our domestic rail industry and remove potential barriers.

Background

4. Interoperability is designed to improve the competitive position of the rail sector through the introduction of a regulatory framework for technical harmonisation and common approval processes for rail projects in Member States. As well as facilitating the through running of trains across the EU it is also expected to lower the cost of rail through providing economies of scale as components are built to common standards set out in the Technical Specifications for Interoperability (TSIs).
5. Those carrying out rail projects involving the construction of new rolling stock and infrastructure, or carrying out upgrade and renewal work, are subject to the regulations. They are required to seek an authorisation to place into service from the national safety authority and provide evidence that relevant EU and national technical standards have been met. The intent when making the 2011 regulations was to fully transpose the requirements of the 2008 Interoperability Directive, as well as ensuring that UK rail businesses were not put at a competitive disadvantage through unnecessarily increasing the costs of projects.
6. The key changes introduced by RIR 2011 were intended to help further develop the interoperability of the EU rail system through the following means:

- enabling a streamlined type authorisation process for vehicles against technical standards and extending the facility to use the type authorisation process to infrastructure projects;
- making it easier to use vehicles in the UK which have already been authorised against technical standards in another Member State;
- further develop the registers for rail infrastructure and vehicles in line with the relevant EU specifications;
- enable DfT to publish a list of lines and vehicles that are excluded from the regulations, such as metros, trams and light rail;
- provide for DfT to publish a pre-screening list of projects that meet the definition of upgrade or renewal and are subject to the regulations to help provide greater clarity to projects.

Format of the Review and Key Findings

7. A short questionnaire was sent to stakeholders seeking views about the key issues identified in the impact assessment that accompanied the introduction of RIR 2011. This impact assessment only considered the impact of the changes that were made to the then existing regime under the 2006 domestic interoperability regulations as this was the requirement at that time. Additionally, some general questions about the impact of the whole regulations were included in the questionnaire.
8. Fourteen responses were received from a broad range of stakeholders, although some sectors did not respond, such as vehicle leasing companies and manufacturers of passenger rolling stock. Overall, the responses suggest the general policy objectives have yet to be realised.
9. The attached PIR explains these issues in detail but the key findings can be summarised as follows:
 - It may take a considerable time to realise the benefits of the regulations as these may not fully materialise until rail systems have been gradually upgraded so that both infrastructure and vehicles achieve a beneficial level of TSI compliance.
 - Some responses suggested that the regulations may have a negative effect through increased costs for small businesses. Network Rail suggested they might add 1% to overall project costs (although they did not support this with an analysis).
 - A greater degree of flexibility in the regulations is desirable to achieve the following:
 - tailor an interoperability regime to suit UK needs and circumstances and take account of the UK's limited rail links with the rest of the EU and the limited amount of international traffic;

- take into greater account that certain specific UK technical characteristics can never align with EU standards e.g. gauge;
- facilitate the use of lower cost existing designs (especially for freight wagons).
- The UK's adherence to EU law may have created a competitive disadvantage for domestic businesses if other Member States have negotiated special treatment or been less diligent in implementing the Directive's requirements.
- The expected benefits from the development of the register of infrastructure have not yet materialised.
- The benefits from the type authorisation process for vehicles have not yet fully materialised, especially for the freight community. In part this may be due to the complexity of the system and invalidation of a vehicle type if a standard subsequently changes. Similarly, the benefits from type authorisation for infrastructure have not yet materialised.

Next steps

10. On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will then determine what arrangements apply in relation to EU legislation in future once the UK has left.
11. The review was a good opportunity to look at how the implementation of EU legislation has impacted upon the domestic rail industry. The findings will help inform our approach to future regulatory changes which will become possible as a result from the UK's exit from the EU. As the UK's position is to exit the EU and not to continue to be bound by EU laws this offers an opportunity to design a framework for applying technical standards in a way that is better suited to UK needs. A strong theme in the responses was the desire to introduce greater flexibilities for parts of the UK rail system to help improve UK competitiveness. Greater flexibilities for the UK freight community, as well as Network Rail when carrying out works on lines that are not part of the Trans European Network, were specifically identified as desirable. Taking these views into account the recommendation from this post implementation review exercise is that DfT consider amending RIR 2011 at the next suitable opportunity in order to add additional flexibilities sought by stakeholders where possible.

12. The Government recognises that a number of key concerns have been raised by stakeholders about how the interoperability Directive has been implemented in the UK. We will take these into account as we develop proposals for amending the regulations to better suit UK circumstances. The outcome of the UK's negotiations to leave the EU will determine how we might make changes to the regulatory regime to address the issues highlighted in this review.