

Changes to ORR's Rail Model Freight Track Access Contract

Department for Transport – Office of Rail and Road (ORR)

RPC rating: **validated**

The IA is now fit for purpose as a result of the department's response to the RPC's initial review. As first submitted, the IA was not fit for purpose.

Description of the measure

The measure introduces changes to ORR's model track access contract (TAC), which is used to formalise freight operators' (FOCs) relationships with Network Rail under the Railways Act 1993.

These amendments were initiated by the industry. In response to Network Rail's call for greater flexibility in relation to network usage, the industry's Contracts and Regulatory Reform Working Group (CRRWG) put forward proposals for new rules governing track access, which included the introduction of "*flexible windows*" for arrival and departure times of freight trains and the removal of "*the clause that limited by how much individual train times could be moved between timetabling periods.*" In line with its statutory approval role for all track access contracts, ORR undertook the process of updating the model TAC to reflect the industry's final position and, therefore, this BIT assessment focuses only on the impacts of that administrative change.

Impacts of the measure

The measure impacts mainly the 5 largest operators. The effect on smaller FOCs is likely to be negligible.

The BIT assessment focuses on one-off costs related to adjusting FOCs existing contracts in line with the TAC requirements.

Based on consultation responses, related to the time FOCs spent developing and implementing track access contract changes during the CRRWG led process, the total cost to business is estimated at less than £2000.

The submission states that FOCs are likely to benefit from not having to amend their contract themselves. ORR does not provide an estimate for this impact as it would not have been proportionate to do so.

The RPC verifies the estimated equivalent annual net direct cost to business (EANDCB) of zero. This will be a qualifying regulatory provision that will score under the business impact target.

Quality of submission

The assessment of the cost of regulation presented in the submission is proportionate. The document clearly sets out the methodological approach and the assumptions used. The estimates are based on consultation data and are presented in an accessible way.

The submission would benefit from greater clarity in relation to the scope of the measure. The Department should have made a clear distinction between the changes introduced by the industry and the administrative amendments which this measure relates to.

The quality of the submission could be improved by making it more easily comprehensible for a lay person. Less frequent use of technical language and clarification of terms unfamiliar to readers from outside the industry would improve future IAs.

Future submissions should also pay more attention to making sure that decisions concerning the use of feedback evidence, especially in cases where a small number of responses is available, should be clearly justified.

Issues addressed following RPC's initial review

As initially submitted, the IA contained defects that meant that the RPC did not consider it fit for purpose. The Department has now submitted additional information that responds to those issues, as set out below.

Lack of clarity with regard to on-going costs

The original impact assessment was unclear about the treatment of on-going costs of the change. The IA suggested that on-going costs would be zero, despite a consultation response that indicated otherwise. In response to the IRN and to the RPC's subsequent request for further clarification, ORR has explained that this apparent contradiction was the result of a poor description of the proposal. ORR has explained that the changes introduced to the model TAC were simply a necessary response to the industry led proposals by the CRRWG. As such, the BIT assessment focuses only on the administrative change involved in updating the TACs.

Use of consultation response from only one business

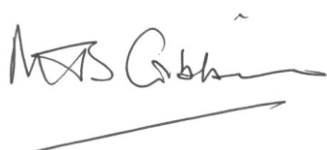
ORR has now provided sufficient justification for this decision. The feedback from the FOC in question was considered sufficient for three reasons. Firstly, that operator was closely involved in the industry led preparation of the original proposal; secondly, as a large business, it was willing to engage with the regulator in order to provide additional information; and, finally, its market position indicated that its responses could be used to approximate accurately the impact on the whole industry.

Departmental assessment

Classification	Qualifying regulatory provision (IN)
Equivalent annual net cost to business (EANCB)	Zero
Business net present value	Zero

RPC assessment

Classification	Qualifying regulatory provision (IN)
EANCB – RPC validated ¹	Zero
Business Impact Target (BIT) Score ¹	Zero
Small and micro business assessment	Not required (fast track low-cost regulation)
RPC rating (of initial submission)	Not fit for purpose



Michael Gibbons CBE, Chairman

¹ For reporting purposes, the RPC validates EANCB and BIT score figures to the nearest £100,000.