

Ensuring continuity, certainty and control in the interoperability regime after exiting the EU

Department for Transport

RPC rating: fit for purpose

Description of proposal

The current UK interoperability regime is established by the Railways (Interoperability) Regulations 2011 (RIR2011) as amended in 2013, 2014 and 2015. These regulations ensure compatibility among European railways, harmonise Member States' design assessment, acceptance and approval processes and deliver benefits of standardisation of railway components. Under the European Union (Withdrawal) Act, the regulations will be retained in UK law, but certain aspects will no longer function once the UK is not an EU Member State; these are referred to as 'inoperabilities' in the impact assessment (IA) and include:

- the application of EU technical requirements in the UK;
- third party assessments of rail products recognised by the EU;
- UK obligations to seek the European Commission's permission to issue derogations from EU Technical Specifications for Interoperability (TSIs) and notify third party conformity assessment bodies;
- the inclusion of EU terminology; and
- the obligation of the National Safety Authority (NSA) to provide information to the European Union Agency for Railways (ERA).

The Statutory Instrument (SI) will amend the text in RIR2011 to ensure the UK's interoperability regime will continue to function after the UK's departure from the EU and will establish a framework for future divergence from EU TSIs. To allow future divergence, EU TSIs will be replaced with UK National Technical Specification Notices (NTSNs). The UK will be able to keep pace with or diverge from EU TSIs by publishing these notices. Although it is uncertain how or if the UK will diverge from EU TSIs, the IA does outline some possible ways in which it could. For example, the UK could diverge from EU standards on platform height requirements and noise emissions. Finally, the SI will require rail vehicles first authorised in the EU to undergo additional authorisation for use in the UK. At present, additional authorisation is voluntary.

The IA considers three options: status quo (option 0.1), do nothing (option 0.2) and amend the RIR2011 to correct the ‘inoperabilities’ and establish a domestic framework allowing the UK to diverge from EU TSIs (option 1). Option 1 is preferred and is described as ensuring certainty, continuity and control following the UK’s exit from the EU.

Impacts of proposal

Impacts of existing regulations (*status quo*)

The IA reviews evidence on the impact of the current interoperability regime (*status quo*). This is used to inform the possible impact of amending the existing regulations (option 1) to allow them to function after EU exit.

The *status quo* option would mean the UK would continue to comply with existing EU regulations without the ability to diverge. For illustrative purposes the Department states that the original IA produced for RIR2011 estimated total costs of £35.8 million and total benefits of £111 million by 2022. Under the *status quo*, the Department does not anticipate any change in benefits from the original IA but, post-implementation, has been made aware of some possible additional costs. The Department has conducted analysis on High Speed 2 (HS2) and concluded that the project could face costs as a result of complying with the platform height requirements specified in an EU TSI. It is unclear at this stage how significant these costs could be and, therefore, the IA does not attempt to quantify them. The Department also notes that the post-implementation review (PIR) of RIR2011 indicated that the freight wagon industry is facing costs, above those estimated, as a result of complying with an EU TSI relating to noise.

Impacts of preferred option (option 1)

The Department does not quantify costs or benefits for the preferred option, as it states that the SI establishes a framework for the UK to diverge from EU rail standards but does not itself specify divergent standards. Instead, the Department takes a narrative approach.

Costs

As correcting the ‘inoperabilities’ within the regulations post-EU exit would not change the scope of the existing interoperability regime, the Department does not anticipate any additional costs above and beyond the *status quo*. Additional UK authorisation of rail vehicles first authorised in the EU is voluntary under existing regulations; this measure makes it mandatory. The reassessment of vehicles will be

limited to relevant UK national technical rules along with any areas in which the UK diverges from EU standards. The Department does not anticipate any additional costs from this change as UK authorisation reflects existing practice. The SI also establishes a framework for future divergence from EU TSIs. It is unclear whether or how the UK will diverge from future EU TSIs; therefore the IA does not attempt to quantify this. However, the Department does note that the publication of NTSNs allowing the UK to align or diverge would constitute a regulatory provision and would therefore be subject to an IA.

Benefits

The Department does provide a narrative assessment of possible ways in which the UK could benefit from divergence.

The IA states that it is likely, at some future point, that the UK will diverge from the platform height requirement EU TSI to avoid possible additional costs to the HS2 project. Under option 1, the Department explains how the freight wagon industry could avoid costs of compliance with an EU TSI relating to noise. Finally, the IA notes that diverging from EU TSIs could allow more flexibility in the way national TSI notices are applied leading to possible future benefits.

Quality of submission

The IA provides a comparison of the policy options against both the *status quo* and a 'do nothing' alternative. This is appropriate and consistent with government guidance on appraisal of EU exit measures. The *status quo* is the appropriate baseline for the assessment of business impacts for better regulation framework purposes; the 'do nothing' comparison is important in demonstrating the case for the policy option. The IA has provided a qualitative description of business impacts against these counterfactuals. This IA is sufficient, because the RPC accepts the Department's assessment that:

- correcting the 'inoperabilities' in RIR2011 does not change the scope of the regulations but rather ensures they function after EU exit;
- uncertainty around whether the UK will diverge from future EU TSIs makes it impossible to assess divergence at this stage;
- the impacts of any future divergence or alignment will be subject to an assessment of the impacts by the Rail Safety and Standards Board (RSSB).

Although future divergence or alignment with EU standards will not be subject to RPC scrutiny, the RSSB will assess the impacts. The development process for TSIs and the UK's subsequent decision to align or diverge will be supported by consultation with industry and social partners including workers' and employers' organisations.

The Department provides a clear narrative assessment of the options and notes that any future UK divergence from EU TSIs will be supported with quantitative analysis. To support its narrative, the Department also highlights possible ways in which the UK could diverge from EU standards in the future.

The RPC had concerns that firms that do not currently opt for additional UK authorisation under the voluntary scheme could face additional costs. However, following communication with the Department the RPC accepts that there is full compliance with the voluntary scheme and that when assessing future UK divergences from EU standards any costs from additional UK authorisation will be included in the analysis.

The Department's assessment would be improved significantly by addressing the following comments:

Small and micro business assessment (SaMBA)

The Department does not include a SaMBA. The RPC accepts the claim that this SI does not significantly change the scope of existing regulations and that the impacts on small and micro businesses of any future divergence from EU TSIs will be assessed. However, the IA would have benefited from a proportionate SaMBA which assessed the impact on small and micro businesses of, for example, mandatory UK authorisation of rail vehicles. The RPC would expect, as best practice, to see this in all future submissions.

Monitoring and evaluation plan

The Department commits to conducting a PIR due to the contentious nature of establishing a framework for the UK to diverge or align with EU standards. The IA would benefit significantly from including an outline of how the impacts of the regulations, and in particular of any future NTSNs would be monitored and evaluated. This would be helpful to facilitate a proportionate PIR. The RPC would

also encourage the Department, when reviewing how the ability to diverge has been used, to consider the cumulative impacts of multiple divergences.

Baseline

The Department uses estimated impacts from the original IA for RIR2011 to illustrate the *status quo* and use as a baseline for comparison with the preferred option. The Department also highlights one area where the PIR of the original IA indicated additional costs to those first estimated, namely the cost of complying with an EU TSI relating to noise. The Department should be commended for drawing on evidence gained from the PIR. However, the assessment would have benefited from a more thorough discussion of any other areas in which the PIR for RIR2011 indicated additional costs or unintended consequences under the *status quo*. Furthermore, the IA would be improved with a description of the rail market as it currently operates under the interoperability regime compared to when the original impacts were assessed. It is possible that the size and structure of the industry has changed significantly since 2011, and evidence relating to this would allow the Department to compare the preferred option to a more robust baseline.

Departmental assessment

Classification	Non-qualifying regulatory provision (EU withdrawal)
Equivalent annual net direct cost to business (EANDCB)	N/A
Business net present value	N/A
Overall net present value	N/A

RPC assessment

Classification	Non-qualifying regulatory provision (EU withdrawal)
Small and micro business assessment (SaMBA)	Not required

Regulatory Policy Committee

One committee member did not participate in the scrutiny of this case to avoid a potential conflict of interest.