

Minimum Service Levels for Passenger Rail

Lead department	Department for Transport
Summary of proposal	The policy will establish a minimum level of service that rail companies, if they choose to make use of powers to issue work notices, must provide in the event of industrial action taken by employees in the sector.
Submission type	Impact assessment (IA) – 12 October 2023
Legislation type	Secondary legislation
Implementation date	8 November 2023
Policy stage	Final
RPC reference	RPC-DfT-5306(1)
Opinion type	Formal
Date of issue	20 December 2023

RPC opinion

Rating¹	RPC opinion
Fit for purpose	As originally submitted, the IA was not fit for purpose; the RPC found that the IA did not clearly set out the requirement being placed upon businesses, preventing the RPC from determining whether the assessment of the impacts was sufficient. The RPC noted similar concerns over any requirements placed upon small and micro businesses (SMBs). In addition, the IA did not clearly set out the evidence supporting key assumptions. The IA now clarifies that the requirement to provide a minimum service level (MSL) only applies when employers choose to use the powers already afforded to them to issue work notices. The Department has included an appropriate assessment of the impact of this policy, which is permissive as far as operators are concerned, and has considered whether any businesses directly affected by the policy are SMBs. While the IA does not include an overall quantitative impact estimate for the scenarios discussed, the Department has provided proportionate assessment of the proposal. The IA includes some assessment of wider impacts but would benefit from fully considering potential impacts upon the structure of the rail market and

¹ The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

investment into the sector. The Department has committed to undertaking a post-implementation review (PIR) for policy, if the powers are used.

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying regulatory provision	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	Not quantified	Not quantified
Business impact target (BIT) score	Not quantified	
Business net present value	Not quantified	
Overall net present value	Not quantified	

RPC summary

Category	Quality²	RPC comments
EANDCB	Green	The Department has been unable to provide a robust estimate of the net direct impact of the measure upon business but has included a sufficient analysis of the range of impacts arising due to the policy. The IA would benefit from including some indicative quantification of the costs to rail service providers under the various scenarios discussed in the IA.
Small and micro business assessment (SaMBA)	Green	While not required, the Department has included an assessment of the potential impacts on SMBs, primarily the unions representing workers in the rail sector. The IA would benefit from discussing the likely impacts on SMBs who provide ancillary services and may be necessary to ensure a safe minimum level of service.
Rationale and options	Weak	The IA includes some discussion of potential market failures within the rail sector on days when strike action occurs; this would benefit from providing greater evidence. The IA would also benefit from greater consideration of the relative impacts of actions short of strike (ASOS) that appear likely.
Cost-benefit analysis	Satisfactory	The Department utilises a range of evidence sources to both shape the policy development and analysis included in the IA. The calculations that have been made are well explained and supported by appropriate evidence.
Wider impacts	Weak	While the IA includes a range of wider impact headings, the Department has not provided a detailed consideration of these, except for an equalities assessment with respect to the rail sector workforce. The IA should consider the impact of MSLs on competition in more detail, as well as upon investment into the sector. It would be further improved by including an equalities assessment of passengers similar to that included for sector employees.
Monitoring and evaluation plan	Good	The Department has committed to undertaking a PIR for the policy. The IA includes a clear monitoring and evaluation (M&E) plan where the Department sets out what existing evidence will be used to inform the review, as well as additional evidence that will be gathered and further clarifying the counterfactual from which it will be measured.

² The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. The definitions of the RPC quality ratings can be accessed [here](#).

Response to initial review

As originally submitted, the IA was not fit for purpose, as the Department had not clearly set out the requirement being placed upon train operator companies by the legislation, which prevented the RPC from determining whether the assessment of the impacts was sufficient. By extension, the RPC noted similar potential concerns over whether any requirements were placed upon SMBs. In addition, the Department had not clearly set out the evidence supporting key assumptions that had been made, as well as failing to sufficiently set out the share of impacts that would fall on the public and private sector respectively.

The revised IA includes further information on the legislative requirements upon business (including SMBs) being introduced. The IA now clarifies that while the enabling primary legislation³ set out powers for employers to issue work notices to employees, doing so is entirely voluntary as the minimum service levels (MSLs) established in this secondary legislation are not legally binding on train operator companies (TOCs). This clarification narrows the scope of the expected direct cost impact upon business from the policy, by removing all costs associated with the issuance of work notices or the provision of MSLs. In addition, the Department included further discussion to support assumptions made and the difficulties faced in breaking down impacts into public and private.

Summary of proposal

In light of recent disruption arising due to increased industrial action in the UK rail sector, the Department is introducing measures that set out what should be defined as a MSL for rail service providers on days in which strike action occurs. The objectives of the policy include seeking to minimise wider disruption across the economy and ensuring that those who need to make essential journeys on these days are still able to do so, while preserving the rights of employees in the sector to take industrial action. The Department discuss multiple options in the IA:

- Option 0 – do-nothing;
- Option 1 – Voluntary MSLs (non-regulatory);
- Option 2 – Design a regulatory MSL framework based on existing timetable arrangements;
- Option 3 - Design a regulatory Priority Route Map of the heavy and light rail network across Great Britain on which MSLs may be provided;
 - Option 3a: Design a Priority Route Map prioritising hours of service;
 - Option 3b: Design a Priority Route Map prioritising geographical coverage of service; and
- Option 4 - Design an MSL level framework that combines aspects of options 2 and 3 and implements different service levels depending on the type of services affected by strikes (the preferred option).

³ The Strikes (Minimum Service Levels) Act 2023 at: <https://bills.parliament.uk/bills/3396>

The main direct costs identified are familiarisation and administrative costs for rail businesses and unions, increased operating costs for providers of rail services (both public and private), a (potential) reduction in bargaining power for unions and a loss of utility for those workers wishing to strike but deemed necessary to provide a minimum level of service. The IA describes the benefits as including increased revenues for providers of rail services, a reduction in negative effects of rail strikes on rail businesses and users, as well as the wider boost for the economy. The IA provides some quantified estimates (such as those for familiarisation costs) but does not include an EANDCB or NPV figures covering the total expected impacts of the measure.

EANDCB

Identification of impacts

The IA identifies a range of impacts relating to the policy, including those upon TOCs and trade unions. The IA now clarifies that the requirement to provide MSLs is dependent on the decision by TOCs to issue work notices and the Department has provided a largely qualitative discussion with some illustrative quantification of the range of impacts likely to arise when work notices are issued by TOCs.

Direct and indirect impact(s)

In the summary table of all the impacts they have considered, the Department has helpfully addressed whether impacts are direct or indirect. While the classification of these impacts may appear reasonable, the Department should more clearly justify the position, making use of RPC guidance on direct/indirect impact classification⁴ and permissive legislation⁵, particularly given the policy has now been clarified as contingent on TOCs choosing to issue work notices.

Quantification of impacts

The Department has not fully quantified the impacts of providing MSLs in response to industrial action, even though the IA appears to contain sufficient information (e.g. the information on various scenarios set out in table 3) to develop a more extensive model of the expected impacts of the preferred option compared to the counterfactual. The Department could explain further why more fully quantified assessment of the likely impacts was not possible. While the Department has provided the justification that some tools (such as Passenger Demand Forecasting Handbook) are primarily used, and only suitable, for assessing small and/or marginal shifts in passenger demand, the IA could explain why the Department did not employ the other tools that are used to assess new infrastructure projects. While the RPC acknowledges the uncertainty regarding the number, scale and duration of industrial action taken, the IA could explain why it has not been able to provide a robust scenario-based quantitative analysis.

⁴ <https://www.gov.uk/government/publications/rpc-case-histories-direct-and-indirect-impacts-march-2019>

⁵ <https://www.gov.uk/government/publications/rpc-case-histories-permissive-legislation-february-2020>

Counterfactual/baseline

The IA includes a discussion of the voluntary action and service provision by businesses across the rail sector on strike days in recent years. While there is some discussion of alternative modes of transport available and used by commuters, the IA would be improved by exploring commuters' flexibility and adaptability in more detail. Furthermore, the IA would benefit from clearly setting out any quantitative information on baseline and assumed counterfactual levels of provision (in particular the routes, frequency and times of service) to support the mostly qualitative discussion.

SaMBA

Identification of impacts upon SMBs

The Department's small and micro business assessment (SaMBA) focusses on establishing that none of the rail service providers are SMBs. The Department has included some consideration of the wider impacts faced by SMBs in other parts of the supply chain, noting that no significant impacts or costs were identified through stakeholder engagement. However, the IA would benefit from further explaining how the revenues or market positions of these other SMBs (in contrast to the analysis provided for train service providers) will be affected by the imposition of MSLs. The Department should consider in more detail the full range of impacts upon ancillary SMBs, if TOCs opt to meet an MSL through work notices.

In addition, the IA considers the impact upon unions (classed as SMBs based on the number of employees, as opposed to size of their membership). The consideration of impacts focusses on the administrative and negotiating costs affecting unions, however, it should clarify that some impacts discussed (such as reduced utility for striking workers) would be focussed on union members rather than the sector workforce generally.

Medium-sized business (MSB) impact

In addition to considering whether any of the businesses impacted by the introduction of MSLs are SMBs, the department has also identified whether any businesses would be classified as MSBs⁶.

Rationale and options

Rationale

While the Department does well to try to identify market failures to support the proposal for government intervention, the IA needs to better support the position that these are applicable to the rail sector during strike action. In particular, the Department should explain how diminished service levels due to industrial action

⁶ <https://www.gov.uk/government/publications/better-regulation-framework/medium-sized-business-regulatory-exemption-assessment-supplementary-guidance>

(i.e., strikes) are a negative externality if the industrial action in question is derived from labour market disputes in the sector. For instance, while train passengers may not be part of discussions leading to industrial action, their interests are likely to be internalised through their demand for the rail services at the centre of the disputes. The Department should also further consider and discuss the alternative transport and actions taken by rail users on strike days, within its consideration of the rationale.

The Department, in strengthening the rationale for intervention, should also consider in more detail the effect of the proposal on the incidence and impacts of actions short of a strike (ASOS). While the IA recognises that the proposal may increase the use by unions of ASOS, this view is highly dependent on the extent to which service levels will be maintained and how any ASOS shortfall might be targeted to put maximum pressure on TOCs. ASOS might provide unions with an alternative to strike action with almost equivalent impacts. The Department should factor ASOS into their consideration of the baseline, rationale and M&E plan for reviewing the policy.

Options

The IA includes a range of options, including a non-regulatory alternative of voluntary MSLs, however the IA would benefit from a more careful attempt to articulate differences in the likelihood of these options achieving the stated objectives and realising benefits. At present, given the limited quantification of each option, all are assessed (including in the summary page that is for all options, not just the preferred one) to have the same impacts. Given the concerns over the access to a minimum service for commuters, coupled with the view that voluntary provision is not sufficient, the IA should also discuss why a compulsory MSL option has not been considered.

Cost-benefit analysis

Evidence and data

The IA draws upon a range of data sources, including official government data and that gathered through various rounds of stakeholder engagement with affected businesses. In addition, the Department has taken on board prior consultation feedback, most notably in the design of the preferred option.

Methodology and assumptions

The Department clearly sets out and explains the approach taken to consider the potential unit costs associated with various impacts throughout the IA, including providing a sufficient explanation of the source and justification for the approach and assumptions used. The IA also includes a discussion of the likely risks and potential unintended consequences of the policy, although this could be strengthened through discussing whether the lack of formal requirement to provide a MSL may undermine the policy objective to minimise disruption.

Wider impacts

Innovation

The IA includes a brief section covering the innovation test but would benefit from further discussion of potential innovation impacts, such as the actions TOCs (or other operators in the sector) may take to increase automation to limit the impact of labour shortages. The IA would benefit from discussing whether the impact of industrial action in the rail sector falls unevenly across more or less innovative sectors. Furthermore, the IA should discuss whether the legislation enables or encourages TOCs to find innovative means to deliver MSLs (where it is beneficial to do so).

Competition

The IA states that the policy is “*not anticipated to have substantial impacts on competition*” (paragraph 252) but would benefit from supporting discussion. The IA should include additional discussion of how the proposal might affect the market structure and dynamics of the rail sector, particularly as competing operators will have the choice of whether to promise to deliver MSLs by means of work notices. This could include whether those TOCs willing and able to provide MSLs are likely to gain an advantage due to being seen more favourably by consumers. Furthermore, the IA should discuss the changes in market power between employers and employees, given the role that work notices are to play in shaping the outcome of the policy.

International trade and investment

The IA also states that it is not believed that policy will “*have any impact on international trade*”(paragraph 248), including a very limited supporting statement as to why this is believed to be the case. The IA should consider in more detail any impact on investment into the rail sector, including new international investment or investment by operators domiciled overseas.

Distributional/regional impacts

The IA includes a summary of an equalities assessment focussed on the workers within the rail sector. The IA would be improved if the Department were to include a similar assessment for commuters who use the affected rail services and are therefore most affected by industrial action and potentially to benefit from the introduction of MSLs. In addition, the IA briefly discusses the impact on rural areas, but the Department should include a broader assessment of the variation in expected impacts across different regions of the country.

Monitoring and evaluation plan

While the impacts of the policy depend on both the occurrence of industrial action and the choice by employers to issue work notices (thereby triggering the MSL requirement), the Department has committed to undertaking a PIR for the policy. The

IA includes a clear plan for assessing whether the policy has achieved the stated objectives, including metrics to be monitored and further evidence that would need to be gathered, although the IA could benefit from additional discussion of the baseline from which the policy will be evaluated. The IA, and review of the policy, would be improved by also considering the impact of the legislation on the likelihood and severity of industrial action.

Regulatory Policy Committee

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