Primary Powers to Implement the Luxembourg Rail Protocol

Lead department	Department for Transport
Summary of proposal	The proposal is to provide a new power in the upcoming Transport Bill to allow future regulations which will allow for the full implementation of the Luxembourg Rail Protocol (The Protocol). The Protocol will establish an international registry of financial interests for rail rolling stock and new unique rail vehicle identification system.
Submission type	Impact assessment (IA) – 1st October 2023
Legislation type	Primary legislation
Implementation date	2023
Policy stage	Final
RPC reference	RPC-DfT-5300(1)
Opinion type	Formal
Date of issue	13 November 2023

RPC opinion

Rating[1]	**RPC opinion**
Fit for purpose	The IA explains why it is not possible to provide an EANDCB figure for validation at this stage but provides an indicative indication of scale of business impact, consistent with RPC guidance. There are some areas identified for improvement in the analysis, particularly in its consideration of uncertainty and expanding its qualitative evidence. Most businesses affected by The Protocol will be large and considering the permissive nature of the proposal, the RPC considers the SaMBA to be sufficient.

Business impact target assessment

	Department assessment	**RPC validated**
Classification	Qualifying provision	Qualifying provision (OUT) – subject to confirmation at

[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.

		secondary legislation stage
Equivalent annual net direct cost to business (EANDCB)	Not quantified	Further IAs to be submitted at secondary legislation for validation of an EANDCB figure.
Business impact target (BIT) score	Not quantified	See above
Business net present value	Not quantified	
Overall net present value	Not quantified	

RPC summary

Category	Quality[2]	RPC comments
EANDCB	**Green**	The IA explains why it is not possible to provide an EANDCB figure for validation at this stage but provides a reasonable indication of scale of business impact, consistent with RPC guidance. The IA would be improved by more comprehensive discussion of business impacts, including benefits.
Small and micro business assessment (SaMBA)	**Green**	The IA states that most companies affected by the legislation will be large businesses. As the proposal is permissive, it is likely to be beneficial to businesses, although there might be an impact on some medium-sized businesses. The IA would be improved by providing some indicative analysis on this impact to establish whether an exemption would be necessary and discussing any potential mitigations.
Rationale and options	**Satisfactory**	The IA outlines the problem under consideration, detailing the current lack of security for lessors of railway rolling stock. The IA should include some indicative evidence on the scale and nature of this current problem. The IA considers two options against a do-nothing option and discounts further discussion on non-regulatory options, stating that the current powers are determined by existing regulation. The IA would benefit from clarifying this reasoning, with reference to the previous regulations.
Cost-benefit analysis	**Weak**	The Department has provided indicative estimates of familiarisation costs and the cost of registering with the international registry and affixing plates. The IA should appraise the ongoing costs over a

[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.

		ten-year appraisal period and provide more discussion on the other non-monetised impacts. The IA would also benefit from summarising the data used and the central assumptions and commenting on their reliability and inherent uncertainties. The Department should also justify the range estimates used in the high/low/central scenarios.
Wider impacts	**Weak**	The IA provides a high-level discussion of a range of wider impacts, including impacts on innovation, equalities and trade. The IA should provide a more detailed qualitative assessment of these impacts and would also be improved by detailing any wider environmental impacts from the proposal.
Monitoring and evaluation plan	**Satisfactory**	The IA states that further details for a PIR cannot be provided at this stage. However, the IA could provide more information on plans for process evaluation, for example, detailing the qualitative and quantitative data that would be used, as well as setting out the desired outcomes from the primary legislation. The IA should also consider the impact that external factors have on the primary legislation.

Summary of proposal

The proposal is to provide a new power in the upcoming Transport Bill which would allow the Secretary of State for Transport to make future regulations for full implementation of the Luxembourg Rail Protocol.

Train operators in the UK typically lease rolling stock rather than own it outright; even where operators do purchase rolling stock, it is often financed by lenders. Rolling stock leasing companies (ROSCOs) own most of the coaches, locomotives and freight wagons in operation on the GB railway, which are leased to train and freight operating companies (TOCs and FOCs respectively).

The Protocol, when implemented, would require each item of rolling stock to be uniquely and permanently identified through a new unique rail vehicle identification system (URVIS). It also creates the international registry for those interests and provides for the functioning of that registry. This is intended to increase the availability and lower the cost of financing the building and leasing of these moveable objects. Furthermore, enabling financing across borders with reduced risks for lenders (such as default or insolvency when rolling stock has crossed a border) will enhance private sector financing opportunities in the UK's railway rolling stock market, as well as increase opportunities for UK businesses to participate in overseas financing activities.

The department considers 2 options within the IA:

- Option 0 – Do nothing
- Option 1 - Provide the Government with the primary power to create and amend secondary legislation in order to properly implement the Cape Town Convention (as it relates to rail rolling stock) and the Luxembourg Rail Protocol (one of four protocols under the Cape Town Convention), which will allow the UK to ratify the Protocol.
- Option 2 – For the Government to seek legislative opportunities to implement the Protocol outside the Transport Bill.

The Protocol will not come into effect in the UK until it is ratified by the UK and implemented through secondary legislation. At this stage, the UK is seeking the power to ensure full implementation of the Protocol before UK ratification. The present IA therefore provides only indicative estimates of the impact of the Protocol (see 'EANDCB' below). The Department will produce a further impact assessment at secondary legislation stage.

EANDCB

Assessment of business impacts at primary legislation stage

The Department has identified and assessed the scale of some impacts of the measure but these are not sufficiently robust at this stage for the RPC to be able to validate an EANDCB figure. This is because the level of detail currently available on the expected content of secondary legislation is insufficient. The IA's approach is consistent with RPC guidance on assessment of impacts at primary legislation stage. The Department commits to producing an IA at secondary legislation stage, where more information will be available on the scope and impacts of the proposal. The RPC would expect to see this IA.. The IA would also benefit from providing greater clarity on how much of the uncertainty around the proposal will be resolved at different stages of the legislative process, e.g., by the Bill's Royal Assent.

Monetised and non-monetised impacts

As noted above, the IA explains why there is too much uncertainty over the impacts of the proposal to allow a meaningful or robust EANDCB at this stage. However, the IA indicates the likely scale of some impacts through illustrative monetised costs. These costs include familiarisation, registering with the international registry and affixing plates to both existing and future rolling stock. The IA details that the one-off familiarisation and registration/plates costs are expected to range between £0.1m and £1.5m, with a central estimate of £0.4m, and the ongoing registration/plates costs are estimates to range between £0.01m and £0.08m, with a central estimate of £0.02m.

The estimated cost of registering an interest and affixing plates is based on engagement with industry experts, who provided a central estimate of £25 for cost of registration and £10 per plate respectively. It is not currently clear what these estimates include, and whether these include the registration/plate charge costs and registration administrative costs that are separately referenced throughout the IA. The Department would therefore benefit from clarifying which costs are included in the registration and plate cost estimates above, and if the admin and charge costs are not included, potentially providing indicative monetised figures for them.

The IA also references other impacts attributable to the proposal, such as the reduced risk for financers and increased competition and innovation in the market for rolling stock finance. The IA also references wider benefits that might be passed through to rail passengers. Although these impacts are highly uncertain at this stage, the IA would greatly benefit from qualitatively expanding on these wider benefits (perhaps through using data on the performance of rolling stock security assets and the risk premia chargeable for financing the purchase of similar assets that do not cross physical borders).

Permissive regulation

As the identification plate and registration of interest are optional for businesses, the proposal is a permissive legislation. The IA could therefore benefit from acknowledging this within the IA, particularly when justifying the SaMBA (below) and classification of impacts (below) in line with RPC guidance.

Classification of impacts

The IA states that all the benefits from the proposal will be indirect. This appears to be reasonable give the brief description of the benefits provided. However, there may be circumstances, given the permissive nature of the proposed changes, where some of the benefits could be considered direct, as RPC guidance on permissive legislation allows benefits resulting from behavioural change to be classified as direct. The Department should clearly set out the full range of costs and benefits in the IA for secondary legislation, and the reason they have been classified as direct or indirect.

The IA would also benefit from clarifying its BIT classification in relation to RPC guidance, and will need to clarify the classification at secondary legislation IA stage. The IA's classification is currently not clear; page 1 states that it is a qualifying provision but page 14 includes a section seeking to demonstrate that the proposal is *de minimis* (which would make it non-qualifying). If the benefits are classified as direct as noted above, this in theory could take the measure over the *de minimis* threshold, in which case this would be a qualifying provision. Conversely, the measure could be seen as meeting international obligations, which would make it non-qualifying. The IA should address this and further explain its classification.

Counterfactual

It appears that there are no impacts in the counterfactual scenario of this measure, as the Protocol has not been implemented and its registry does not currently exist. The IA states that it expects limited impacts on existing rolling stock leases, TOCs and FOCs, and that these would only occur when new finance is taken out after implementation of the protocol, or when owners are required to register their interests. The Department could benefit from clarifying this counterfactual position in the IA.

SaMBA

The IA states that most companies affected by the legislation will be ROSCOs, FOCs or TOCs, and uses data gathered by the Office of Rail and Road (ORR) on their employee numbers to argue that these are typically large businesses. Therefore, it is not expected that any SMBs will be affected by the primary legislation.

Additionally, as identification plates and interest registration are optional, compliance is considered voluntary and the proposal is permissive legislation. Therefore, it is likely to be net beneficial to any potential businesses, including SMBs.

Medium-sized business consideration

The IA states that some open access operators (OAOs) have between 99 and 499 employees, meaning the proposal will affect some medium size businesses. The IA lists some non-franchised OAOs and the numbers of their employees to illustrate this, but could benefit from some indicative analysis of the number of medium-sized businesses that would be affected by the legislation to establish whether an exemption would be necessary or possible. The IA could also benefit from discussing any potential mitigations for adverse impacts on medium-sized businesses, such as an extended transition period or the provision of guidance.

Rationale and options

Rationale

The IA outlines the problem under consideration, detailing the current lack of security for lessors of railway rolling stock, which can act as a barrier to private financing initiatives. Although the Department acknowledges the evidence gap in this area, the IA could have benefitted from including some indicative evidence of the scale and nature of this current problem to strengthen the rationale for government intervention, for example qualitative evidence from the literature or international evidence from the other signatory states.

The IA states that a public consultation was conducted on the policies proposed as part of rail reform, aimed at key stakeholders across the rail industry. It could benefit from detailing what questions were asked and expanding on the results from this consultation to further enhance the rationale.

The IA could also provide further detail on how implementing the Protocol would offer a direct solution to the current issues, and by what mechanism its international registry is expected to provide greater security for creditors in rail rolling stock.

Options

The IA considers two options against a do-nothing option; introducing a primary power to implement the Protocol (Option 1) or seeking other legislative opportunities to implement the Protocol (Option 2).

The IA states that is not possible to implement the Protocol without regulation, as this exceeds the powers conveyed by existing regulation. Therefore, any further discussion of non-regulatory options has been discounted. However, the IA could further clarify this reasoning with reference to the previous regulations, and therefore demonstrate why an alternative would not achieve the objectives.

The Department states that the Government has committed to consultation prior to the secondary legislation. Therefore, for the benefit of consultees, the IA could set out a long-list of options and a short-list of options, rated by critical success factors, to illustrate how the preferred option has been chosen.

Cost-benefit analysis

Methodology

The Department has provided indicative estimates of the one-off familiarisation costs associated with the proposal, the cost of registering with the international registry and of affixing plates to both existing and future rolling stock. The IA details that theseone-off familiarisation and registration/plates costs are expected to range between £0.1m and £1.5m, with a central estimate of £0.4m, and the ongoing registration/plates costs are estimates to range between £0.01m and £0.08m, with a central estimate of £0.02m. However, the IA should appraise the ongoing costs over a ten-year appraisal period if it seeks to justify a *de minimis* classification in line with Green Book guidance.

The central estimate appears to be skewed low. This is because the IA bases the central and high scenario on industry expert cost estimates for vehicles (£25) and aircraft (£78) respectively, whilst conversely calculating the low scenario based on a 50% cost decrease from the central scenario. The IA would therefore benefit from justifying the range used in the high, central and low scenarios.

The IA notes that each registration of interest is likely to cover multiple vehicles but the current analysis in the IA multiplies the unit cost of registration (£25) by the number of rolling stock vehicles, with the high scenario assuming all existing vehicles are registered. Therefore, if the registration will cover multiple vehicles, more clarity should be provided on why the cost of registering an interest is not applied to multiple vehicles at one time in the analysis.

It is also not clear why some potentially quantifiable costs have not been monetised in the cost-benefit analysis, such as the administrative costs and the charge cost for issuing unique identification numbers. The IA should discuss these areas further and justify why they remain non-monetised at this stage.

The IA also lists the indicative costs and benefits in Table 1, although this should be further developed. For example, it could include further qualitative explanation of the expected benefits, including wider benefits received by rail users, perhaps through using data on the performance of rolling stock security assets and the risk premium chargeable for financing similar assets that do not cross physical borders.

Evidence and data

The IA uses evidence from a range of sources to support the cost calculations, including data from the Office for National Statistics (ONS), the Office of Rail and Road (ORR) and internal data received from ROSCOs and TOCs. As the analysis uses a range of different data sources , the IA would benefit from summarising them for the lay reader and commenting on their reliability and inherent uncertainties when used to assess some impacts, particularly as regards the most uncertain aspect which is the ongoing registration of vehicles.

The IA also utilises data from the Rail Working Group, referencing their report that the benefit of the Protocol will be around £5.2bn in present values over thirty years. As this evidence is quite significant in relation to the proposed measure, the IA would benefit from further discussion, including how the figure was calculated and how reliable it is.

The Department states that it plans use data from the Supervisory Authority to provide further evidence of the cost of Protocol implementation at the secondary legislation stage. Although these data are not currently available, the IA should expand on the type of data they expect to receive and how they will be utilised to calculate the costs and benefits associated with the whole policy.

Assumptions

The IA makes several assumptions throughout the analysis and appropriately uses different scenarios of the number of vehicles and unit cost of registration/plates to present the estimates as ranges. However, the IA should further discuss these assumptions, particularly around the key central scenarios. For example, it is not clear how the key central assumption that two thirds of existing vehicles will be registered was derived and whether this represents the voluntary nature of the registry or something else. This assumption is significant, feeding directly into the cost estimate ranges, so the Department should set out the assumptions clearly in the IA and acknowledge the levels of uncertainty of some estimates.

Risks

The IA appropriately discusses risks and unintended consequences associated with the proposal, including the impacts on insurance policies and legacy transition costs. The IA should expand the risk section to discuss the sensitivity of the analysis to assumptions about the predictability of lenders' behaviour, and how this could result in potential unintended consequences such as lenders not passing on benefits to TOCs. Equally, there is a risk that creditors might choose not to sign up to the international registry, which would affect the key costs and benefits throughout the IA.

Wider impacts

The IA provides a high-level discussion of a range of wider impacts, including impacts on innovation, equalities and trade. The IA states that the proposal is inherently innovative, as it would facilitate entry to the market and reduce the security risk to which creditors are exposed. This impact assumes that the UK would receive the same impacts as countries and that benefits accrue symmetrically in the UK and other countries. The IA should therefore clarify the basis behind this assumption and provide justification that the UK will not lose out compared to other signatories. Additionally, some further consideration could have been applied to the trade impacts in terms of which borders UK-based rolling stock can cross due to the island nature of the UK.

The IA references an equalities impact assessment and consideration of protected characteristics but should include further details of this analysis within the IA.

The IA states that subsequent secondary legislation would have impacts on overall trade and competition. Although uncertain at this stage, in line with RPC guidance on indicating the potential scale of the whole policy the IA should provide a more detailed qualitative assessment of these impacts. For example, the Department could clearly set out how the proposal is expected to affect the market for rolling stock finance, deepening the discussion of how reducing financing risk might affect financing cost and attract new entrants. Indicative analysis could be conducted to estimate how demand and supply will interact in a competitive market equilibrium and how this in turn will affect lessors and lessees (for example if lower borrowing costs are passed on from lessors to lessees and ultimately to passengers). The IA would also benefit from providing indicative estimates of impacts on imports and exports.

The IA should also detail any wider environmental impacts of the proposal, and explaining any impact that boosting the financing opportunities in the UK's railway rolling stock market might have on UK rail emissions.

Monitoring and evaluation plan

The IA states that further details for a Post-implementation review (PIR) cannot be provided at this stage, given that this legislation creates c powers for subsequent secondary legislation. However, the IA could provide more information on plans for process evaluation, which would assess the efficiency of the primary legislation to enable the subsequent regulation. For example, the Department could have detailed the metrics they would use to measure the effectiveness of this primary legislation and some examples of qualitative and quantitative data that would be used to accurately capture it, as well as setting out the desired outcomes from the primary legislation. The IA could also benefit from considering the impact that external factors could have on the primary legislation, and whether any external factors pose a risk to its success.

Regulatory Policy Committee

For further information, please contact regulatoryenquiries@rpc.gov.uk. Follow us on Twitter @RPC_Gov_UK, LinkedIn or consult our website www.gov.uk/rpc. To keep informed and hear our views on live regulatory issues, subscribe to our blog.

Stephen Gibson and Andrew Williams-Fry did not participate in the scrutiny of this case to avoid a potential conflict of interest.