

Power to make or amend rail markets legislation in the Rail Reform Bill

Lead department	Department for Transport
Summary of proposal	The proposal is to include a power in primary legislation that enables Government to make amendments to rail markets regulations through secondary legislation to deliver rail reform objectives on access and use of the railway.
Submission type	Impact assessment (IA) – 3 November 2023
Legislation type	Primary legislation
Implementation date	tbc
Policy stage	Final
RPC reference	RPC-DfT-5301(1)
Opinion type	Formal
Date of issue	27 November 2023

RPC opinion

Rating¹	RPC opinion
Fit for purpose	On first submission the IA received an initial review notice (IRN). The revised IA has satisfactorily addressed the RPC's concerns on the assessment of the direct impacts on business, including specific considerations in respect of small and microbusinesses, at primary legislation IA stage. There are some areas for improvement, including wider impacts.

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying provision (IN)	Qualifying regulatory provision (IN) – to be confirmed at secondary legislation stage
Equivalent annual net direct cost to business (EANDCB)	Not quantified at this stage	Further IA(s) to be submitted at secondary legislation stage for validation of an EANDCB figure
Business impact target (BIT) score	Not quantified at this stage	See above
Business net present value	Not quantified at this stage	
Overall net present value	Not quantified at this stage	

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.

RPC summary

Category	Quality²	RPC comments
EANDCB	Green	The IA now provides a sufficient indication of potential direct business impacts by including discussion of the impact of previous relevant amendments to rail markets legislation and potential uses of the power. The IA would benefit from presenting more discussion and ideally quantitative illustration of impacts.
Small and micro business assessment (SaMBA)	Green	The IA provides a significantly expanded small and microbusiness assessment. This includes greater description of businesses potentially affected by employer size. The IA provides a useful discussion of disproportionality of impact but would benefit from discussing potential mitigation further.
Rationale and options	Satisfactory	The IA now provides a satisfactory explanation of the rationale for taking the power at this time. The IA includes more information on the establishment of an Integrated Rail Body but would benefit from discussing further how the measure covered by the IA fits within the proposed Bill as a whole, and the nature of the other measures, including their better regulation framework status. The IA would benefit from presenting its options, in particular the baseline, more clearly.
Cost-benefit analysis	Weak	The Department has now added a useful summary of the consultation responses but would benefit drawing further upon the responses and from elaborating briefly on the concerns mentioned and the reassurances provided. The IA would benefit from more detail on evidence, data and methodology; this will be required for the secondary legislation IAs.
Wider impacts	Weak	The IA now usefully includes a discussion of competition impacts but would benefit from some illustration using past amendments or potential changes that could be brought forward. The IA would also benefit from discussing potential trade impacts and proportionately addressing innovation.
Monitoring and evaluation plan	Satisfactory	The monitoring and evaluation plan now includes more detail on objectives and how the PIR will be conducted. Further detail will be needed for the secondary legislation IAs.

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 primarily because of the following issues:

Insufficient indication of the potential direct business impact of possible secondary legislation (i.e. impact of the whole policy)

The IA did not meet the RPC's requirements for the assessment of proposals at primary legislation stage. The IA did usefully explain why policy decisions would not be known until secondary legislation stage and committed to providing IAs at that stage. However, for a proposal with apparently wide-ranging scope and potential impacts, the IA's assessment was relatively brief and wholly descriptive. The RPC felt it would appear to be proportionate for the IA to provide at least some further discussion, with case study illustration, of the type and impact of secondary legislation that could be brought forward, drawing upon past measures. This was necessary to meet RPC guidance for assessment of proposals at primary legislation stage.³

In addition, the IA focussed on familiarisation and administrative costs and needed to provide a broader consideration of potential costs, such as potentially on business operating costs and revenue. The IA also needed to provide indicative estimates of familiarisation costs or explain why it would not be proportionate to do so.

Small and microbusiness assessment (SaMBA)

In an improved assessment of business impacts, the IA needed to draw out impacts on small and microbusinesses, discussing any potential issues such as (dis)proportionality of impact.

The department has responded satisfactorily to the issues raised in the RPC's initial review, as described below.

Summary of proposal

The proposal is to include a power in primary legislation that enables Government to make amendments to rail markets regulations through secondary legislation to deliver rail reform objectives on access and use of the railway. The power includes the ability to make regulations or amend rail market legislation related to, but not limited to, the following areas:

- the authorisation of persons to operate train services;
- the operation of and access to railway infrastructure;

³ <https://www.gov.uk/government/publications/rpc-case-histories-primary-legislation-ias-august-2019>

- the management of train services operators, infrastructure operators, and service providers; and
- competition in the rail markets.

EANDCB

The IA has addressed the RPC's points on indicating the potential direct business impact of possible secondary legislation, although there remain areas for improvement. The IA now includes a discussion of the costs and benefits to business of previous relevant amendments to rail markets legislation, including a case study presented in a box (mainly at pages 11-12 in section 2.3). The IA also newly includes discussion of potential uses of the power. The assessment is now sufficient at this stage, given the uncertainties around the nature of forthcoming secondary legislation. However, the IA would benefit from presenting more discussion and ideally quantitative illustration of impacts where amendments might go beyond technical changes.

The IA now references potential operational costs and benefits of secondary legislation measures (table, page 10) but would benefit from further discussion of how such impacts might arise and their potential scale. The IA now helpfully provides indicative monetised estimates of familiarisation costs (page 13).

SaMBA

The revised IA provides a significantly expanded small and microbusiness assessment and now meets SaMBA requirements at primary legislation stage. The IA has added greater description of businesses potentially affected by employer size, including new tables on interurban passenger transport and freight rail transport businesses. The IA provides a useful discussion of disproportionality of impact but would benefit from saying more about potential mitigation.

Medium-sized business considerations

The IA usefully presents information on open access operators, noting they are medium-sized businesses. The IA would benefit from discussing impacts on medium-sized businesses more explicitly.

The IA has been improved in some other areas following the RPC's initial review, as described below.

Rationale and options

The IA includes more information on the rationale for the establishment of the Integrated Rail Body (IRB) and explains that a separate IA will cover the impacts of this. The IA would benefit from discussing further how the proposal fits within the proposed Bill as a whole and the nature of the other measures, including the various accompanying IAs and better regulation framework status of them. The IA helpfully

explains further why the power is being proposed at this stage and outlines the origin (EU vs domestic) of current legislation in this area.

The IA would benefit from setting out the options better, in particular clarifying an appropriate baseline option. For example, it would appear that option 0 could be a pure do nothing, while using guidance/non-legislative approaches and implementing required amendments to rail markets legislation via primary legislation could be options 1 and 2. Option 3 would then be taking a power in primary legislation, i.e. the preferred option. The Department should present more clearly what is the most appropriate baseline from which to assess impacts.

Cost-benefit analysis

The Department has now added a useful summary of the consultation responses (page 14). The IA would further benefit from elaborating briefly on the concerns mentioned and the reassurances provided. More detail on evidence, data and methodology will be required for the secondary legislation IAs.

Wider impacts

The IA now usefully includes a discussion of competition impacts (pages 14-15). This would benefit, as has been done for business impacts, from some illustration using past amendments or potential changes that could be brought forward. While the IA discusses compliance with international requirements, it should address impacts on trade and investment. The IA would also benefit from proportionately addressing innovation.

Monitoring and evaluation plan

The monitoring and evaluation plan has been usefully expanded to include further detail on objectives and how the PIR will be conducted, including how data will be collected and evaluation approaches. Further detail will be needed for the secondary legislation IAs.

Regulatory Policy Committee

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