

## Draft Rail Reform Bill

<b>Lead department</b>	Department for Transport
<b>Summary of proposal</b>	The proposal is to establish a new integrated rail body (IRB) to coordinate the railways. The IA addresses specific elements of the IRB, such as accessibility, data, and environment.
<b>Submission type</b>	Impact assessment (IA) – 28 <sup>th</sup> February 2024
<b>Legislation type</b>	Primary legislation
<b>Implementation date</b>	TBC
<b>Policy stage</b>	Pre-legislative scrutiny
<b>RPC reference</b>	RPC-DfT-5335(1)
<b>Opinion type</b>	Formal
<b>Date of issue</b>	26 March 2024

## RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Fit for purpose</b>	As most of the measures mentioned in the IA are not regulatory provisions, the EANDCB has not been monetised for the draft bill. For measures that are regulatory provisions, the IA explains why it is not possible to provide an EANDCB figure at this stage but provides a reasonable indication of scale of business impact. This is consistent with RPC guidance for primary stage legislation under Scenario 2. The proposal is not expected to have direct impacts on small or micro businesses (SMBs).

## Business impact target assessment

	<b>Department assessment</b>	<b>RPC validated</b>
<b>Classification</b>	Qualifying provision	Qualifying provision
<b>Equivalent annual net direct cost to business (EANDCB)</b>	Not quantified	Further IAs to be submitted for related secondary legislation for validation of an EANDCB figure.

<sup>1</sup> 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.

<b>Business impact target (BIT) score</b>	Not quantified	See above
<b>Business net present value</b>	Not quantified	
<b>Overall net present value</b>	Not quantified	

## RPC summary

<b>Category</b>	<b>Quality<sup>2</sup></b>	<b>RPC comments</b>
EANDCB	<b>Green</b>	As most of the measures in the IA are not regulatory provisions, the EANDCB has not been monetised for the proposal. For the two regulatory provisions, the IA explains why it is not possible to provide an EANDCB figure for validation at this stage but provides a reasonable indication of the scale of business impacts, consistent with RPC guidance for primary legislation. However, these IAs would be improved by more comprehensive discussion of business impacts, including benefits.
Small and micro business assessment (SaMBA)	<b>Green</b>	The IA states that, as the proposal involves a change to the structure of the sector, it is not possible to exempt small and micro businesses (SMBs) or medium-sized businesses from the proposals. However, the proposal is not expected to have direct impacts on these businesses. The IA would benefit from providing further detail on indirect impacts on these businesses and potential mitigations.
Rationale and options	<b>Weak</b>	The Department references market failures in the current rail system but needs to expand the discussion, possibly incorporating the Williams Review to clarify how the proposals might address these market failures, particularly in subsequent secondary legislation. The IA should also provide more detail on the current and likely future structure of the rail system for the lay reader. The Department has considered a variety of non-legislative and legislative options for implementing the proposed measures, alongside a Do-nothing option. The IA should expand more on non-legislative options, particularly if they could be used in parallel with the preferred legislative option.
Cost-benefit analysis	<b>Satisfactory</b>	The Department has monetised the cost-benefit estimates for the Luxembourg protocol measure.

<sup>2</sup> 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](#).

The IA does not include quantified cost-benefit analysis for most of the other measures but provides indicative estimates of the total cost to the Exchequer of structural reform. The IA would benefit from providing more detail on the methodology and calculations underpinning these estimates and should ensure that costs and benefits are appraised over a ten-year period, according to Green Book guidance.

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Wider impacts     **Weak**

The IA provides a high-level discussion of a range of wider impacts, including impacts on innovation and environment, but could benefit from expanding This discussion and including potential competition impacts. The IA would also benefit from indicating the potential scale of the whole policy, and detailing potential wider impacts expected once the IRB is established and subsequent secondary legislation has been implemented.

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Monitoring and evaluation plan     **Weak**

The IA provides a light touch description of the monitoring and evaluation plan for the programme. This could be improved by providing more detail, including examples of potential data, metrics, and timelines for retrieving these data. The IA commits to conducting a PIR for the Power to amend and the Luxembourg protocol measures, as these are regulatory provisions. The IA for the Power to amend includes detail on objectives and how the PIR will be conducted but more detail could be provided on the PIR planned for the Luxembourg protocol.

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## Summary of proposal

The Department is seeking pre-legislative scrutiny on the draft Rail Reform Bill which would amend existing legislation (including the Railways Act 1993, and the Railways (Access, Management and Licensing of Railways Undertakings) Regulations 2016) to allow for the establishment of a new integrated rail body (IRB). The IRB would improve the coordination of the railways by providing a single point of accountability. It will also bring network management and the functions of the franchising authority into one body to make decisions in the public interest. This could improve outcomes for customers and provide the private sector with the structure and confidence to make long-term investment decisions by allowing better functioning of relevant markets. To improve the customer offer, the legislation proposes to introduce specific duties in relation to the environment, accessibility, and freight, set out in the IRB's licence, to ensure that accessibility on the railway is improved and the experience for disabled passengers is enhanced.

The impact assessment describes the impact of establishing the IRB and is followed by annexed impact assessments addressing specific elements of the draft Bill. These are as follows:

- Annex A: Accessibility
- Annex B: Data
- Annex C: Environment
- Annex D: Office of the Rail Regulator (ORR) Competition Duty
- Annex E: Amendments to the Access, Management and Licensing Regulations 2016
- Annex F: Power to Amend
- Annex G: Luxembourg Protocol

The overarching IA and Annexes A – E are not regulatory provisions. Annex F (Power to amend) and Annex G (Luxembourg protocol) are regulatory provisions and have previously received fit for purpose opinions from the RPC.

The two regulatory provisions will not come into effect until they are implemented through secondary legislation. At this stage, the UK is seeking the power to ensure full implementation before UK ratification of the legislative power. The present IA therefore provides only indicative estimates of these measures (see 'EANDCB' below). The Department will produce a further impact assessment for subsequent, related secondary legislation.

## EANDCB

The Department states that, as the IA is for draft primary legislation and the assessments in the IA have been largely qualitative and summary figures, the EANDCB has not been monetised. This is in line with RPC guidance for primary legislation (under scenario 2) and is also supported by the fact that most of the measures in the IA are not regulatory provisions and do not require a change in behaviour from businesses.

For the two regulatory provisions, the Department has identified and assessed the scale of some impacts. The RPC opined previously on the Luxembourg protocol measure (which establishes an international registry of financial interests for rail rolling stock) but the impacts were not sufficiently robust at that stage to enable the RPC to validate an EANDCB figure. This is because the level of detail currently available on the expected content of related secondary legislation is insufficient (as the Protocol is not currently in force, the hypothetical scenarios and market conditions surrounding future regulatory interventions are uncertain). The IA's approach is consistent with RPC guidance on assessment of impacts for draft primary legislation. The Department commits to producing an IA for related secondary legislation, where more information will be available on the scope and impacts of the proposal.

The Department also discusses the potential direct business impact of secondary legislation in the Power to amend proposal (which enables Government to make amendments to rail market regulations), discussing the costs and benefits to business of previous relevant amendments to rail market legislation, including a case study. As previously opined, the RPC considers this assessment is sufficient at this stage, although the IA would benefit from presenting more discussion and ideally quantitative illustration of impacts.

Although the other measures in the IA are not regulatory provisions and do not directly require changes in behaviour from businesses, the IA would still benefit from detailing potential impacts associated with their implementation. In particular, the IA provides very little discussion of the business impacts from the overall establishment of the IRB and would benefit from providing some indicative estimates, particularly as the IRB aims to address market failures which affect businesses for example, the IA could provide indicative estimates for some other business impacts that might arise from secondary legislation. Placing the environmental or accessibility duties on the IRB will ultimately have impacts on business, resulting from the actions the regulator takes to meet the duty, and the IA should expand on these, for example detailing how the accessibility duty will impact the day-to-day operations and required resources of train operating companies (TOCs).

## **SaMBA**

The IA states that the proposal to establish the IRB involves a change to the structure of the sector, hence it is not possible exempt small and micro businesses (SMBs) or medium-sized businesses from the measures. However, the proposal is not expected to have direct impacts on these businesses. To illustrate the number of SMBs and medium-sized businesses exposed to indirect impacts, the Department has used data on business population to provide estimates of the size (in terms of employees) of businesses potentially affected. This shows that some open access operators (OAOs) are medium-sized businesses and that over 25 per cent of inter-urban passenger rail transport businesses are SMBs.

Although the Department does not expect the proposal to have significant direct impacts on these businesses (as most measures are not regulatory provisions and

do not require specific changes in behaviour from businesses) the IA could provide further detail on how the proposals could affect these businesses indirectly, and on potential mitigations for disproportionate adverse impacts. For example, the IA would benefit from saying more about potential mitigations for the private companies (some of which may be SMBs and medium-sized businesses), which may experience adverse impacts depending upon how the Integrated Rail Body chooses to act upon the Environment duty, and mitigations for OAOs (which are medium-sized businesses) which may be affected by provisions relating to ORR's competition duty, the Luxembourg protocol and the Power to amend.

## Rationale and options

### Rationale

The IA outlines the problem under consideration, explaining that the current fragmentation of the railways has led to a lack of integrated decision-making. In response, the Government's *Plan for Rail* recommended the establishment of a new IRB. The Department references the market failures in the current rail system (such as misaligned incentives and coordination failure) but could expand more how the proposals might address them, particularly via future, related secondary legislation. For example, even though the timing and details of secondary legislation remain uncertain, the IA would benefit from setting out potential changes the IRB could make to improve accessibility on the railways, or how the IRB's the power to disclose data could potentially improve the efficiency of the industry. Furthermore, the IA states that the IRB will make decisions in the public interest and provide the private sector with the structure and confidence to make long-term investment decisions but could provide some further explanation on why this is needed and how these outcomes could be ensured.

The IA could, at a minimum, reference the extensive literature on how the system evolved (what problems it tried to solve), for lay reader to help understand the motivation behind the current proposals and the likelihood that they will achieve their objectives without jeopardising progress made to date. Furthermore, the IA could benefit from clarifying how industry associations, such as National Rail, will continue their role under the new IRB and what wider governance arrangements will be needed to reflect the new sector structure.

Although the Department acknowledges the evidence gap in the Luxembourg protocol measure, the IA could benefit from including indicative evidence of the current scale and nature of this problem to strengthen the rationale for government intervention, for example by citing qualitative evidence from the literature or international evidence from the other signatory states. The IA could also benefit from expanding on the results from the public consultation to further enhance the rationale.



The IA would benefit from providing some quantitative analysis of performance indicators of the rail industry, particularly the impact on passengers. This might be useful in illustrating how the industry is perhaps currently failing and how the new structure is expected to help.

## Options

In the IA, the Department has considered a variety of non-legislative and legislative (primary) options for implementing the proposals alongside a Do-nothing option. The IA could expand more on the non-legislative option, particularly if this could be used in parallel with the preferred legislative option, and possibly consider a further range of non-legislative options to strengthen the IA. The IA could also provide further explanation on why the existing legislation, such as the Railways Act (1993) cannot be amended using secondary legislation and why primary legislation is required to achieve the aims of the proposal. Furthermore, the IA could also benefit from explaining why legislation is the preferred option, particularly when many benefits can be obtained under both the legislative and non-legislative options (as in the Data measure).

## Cost-benefit analysis

### Methodology

The Department has monetised cost-benefit estimates for the Power to amend and the Luxembourg protocol, the two regulatory provision measures included in the draft bill. The RPC has previously opined on these IAs, noting that the ongoing costs for the Luxembourg protocol measure should be appraised over a ten-year appraisal period and that justification should be provided for why some potentially quantifiable costs have not been monetised.

The IA does not include quantified cost-benefit analysis for the other proposals in the Bill, which are not regulatory provisions, except as part of the costs and benefits of the proposal as a whole. The Department provides indicative estimates that the total cost to the Exchequer of structural reform will be £381 million over a seven-year period, with total Exchequer benefits from streamlining and avoiding duplication estimated at £957 million over the same period. The IA states that these estimates have been developed using a bottom-up analysis and budget figures but would benefit from providing more detail on the methodology and calculations used to reach these estimates.

The IA should also ensure that these costs and benefits are appraised over a ten-year appraisal period, in line with Green Book guidance. There is no evidence in the IA that these government costs cease after seven years; just that they are currently uncertain. The cost-benefit analysis still should include any uncertain estimates from years 7-10 with appropriate sensitivity analysis to clarify the significance of that uncertainty.

Other potential costs and benefits of the proposed primary legislation are discussed qualitatively. The IA states that this is because of the high-level nature of the changes and uncertainty regarding the structure of the IRB. This is further justified on the grounds that most of the measures are not regulatory provisions. However, for a proposal with apparently wide-ranging scope and potential impacts, the IA is, at times, relatively cursory. The IA could benefit from providing further discussion, with case study illustration, of the types and impacts of secondary legislation that could be brought forward, drawing upon past measures e.g. indicative estimates for some of the cost impacts mentioned.

For example, throughout the IA, the Department references the cost of *“implementing legislation and familiarisation costs to operators and private companies”*. The IA should clarify whether these costs refer to the cost of this legislation or the cost to business after the IRB has been established and started work. Where this familiarisation cost is mentioned qualitatively, the IA would also benefit from expanding more generally on this impact and providing some indicative estimates, for instance indicating the roles and salaries of staff who would need to familiarise themselves with the requirements.

See also comment below on the extent of air and automobile transport as alternative sources of transport and potential impacts on the cost benefit analysis.

### **Evidence and Data**

The document mentions the consultation evidence but would benefit from including more information on stakeholder feedback, particularly on fragmentation and accountability. The IA would benefit from reflecting on the history of previous structural reorganisations network management, perhaps using the Williams review (which appears to be a good example of the ‘Evaluation First’ principle).

As noted above, the IA includes some indicative cost-benefit estimates of establishing a new IRB. The IA states that these estimates have used a bottom-up approach, drawing on a broad range of data and case studies, but would benefit from setting out the data sources that have been used within the IA.

Similarly, the analysis of the Luxembourg protocol measure would benefit from expanding on its description of the data used (for example, summarising the range of different data sources and how detailing it plans to use the Supervisory Authority data) as the RPC previously commented in the separate submission of the Luxembourg protocol IA.

### **Assumptions and risks**

The IA makes several assumptions throughout its qualitative cost-benefit assessment and could benefit from discussing further the risks associated with these. For example, there is a key assumption that the environment and accessibility duties placed on the IRB will actually lead to direct change and the Data measure is based on the assumption that TOCs will respond positively to the future disclosures



and not bring legal challenge against the IRB. Overall, the IA should provide more assessment of risks around such a large structural change (a new single organisation which deals with both "track and train") with consideration of mitigation strategies.

Furthermore, the assumptions made to estimate the indicative estimates provided in the overarching IA would benefit from being tested, by using sensitivity analysis or applying a range.

## **Wider impacts**

The IA provides a high-level discussion of a range of wider impacts, including impacts on innovation and environment, but would benefit from expanding on these impacts, particularly for the regulatory provisions. Furthermore, the overarching IA would benefit from discussing possible competition impacts, for example, whether the establishment of the IRB would improve coordination and accountability.

The IA would benefit from discussing the extent of air and automobile transport as alternative sources of transport and whether this, therefore, could create some level of (imperfect) competition in the market. This should include discussion of impacts on the cost/benefit analysis, for example through differential carbon emissions (the IA specifically notes that rail travel is lower carbon than alternatives) and potential impacts in other areas such as in terms of public health.

The IA includes a discussion of competition impacts from the Power to amend measure but could provide some illustration using past amendments or foreseeable future changes. The IA would also benefit from discussing the trade, investment, and innovation impacts of this measure. The IA references an equalities impact assessment in the Luxembourg protocol measure, but should include further details of this analysis within the IA. The treatment of this aspect would also benefit from clarifying whether the UK would receive the same innovation impacts as other countries.

The IA would benefit from indicating the potential scale of the whole policy, and detailing potential wider impacts expected once the IRB is established and subsequent secondary legislation has been implemented. For example, the IA could discuss the likely positive equalities impacts that may occur once the IRB takes action to meet the accessibility duty, as well as the potential pass-through impacts to consumers as a result of decisions regarding use of public funds when setting access charges for OAOs in the ORR's competition duty measure (for example, through conditioning charges on passenger satisfaction, or increased fares for passengers due to increased track access charge for OAOs).

Furthermore, the Department could clearly set out how implementing the Luxembourg protocol 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.

## Monitoring and evaluation plan

The IA provides a light touch description of the monitoring and evaluation plan for the programme, stating that the Department is currently developing a structured benefits management approach to monitor the measures and will conduct an impact evaluation, drawing on a range of data sources including internal monitoring data. The IA could be improved by providing more detail on the internal monitoring data it expects to utilise, including examples of potential qualitative and quantitative data, metrics, and potential timelines for retrieving these data. Furthermore, the IA could provide more information on plans for process evaluation, which would assess the efficiency with which the primary legislation enables subsequent regulation. The IA could also benefit from considering the impact of external factors on the primary legislation and whether any external factors pose a risk to its success.

The Department states that a separate post-implementation review (PIR) will not be conducted for the non-regulatory proposals in the IA as the proposed changes in the IA are minor and of a technical nature. The RPC considers this a reasonable approach. The IA commits to conducting a PIR for the Power to amend and the Luxembourg protocol regulatory measures. The IA for the Power to amend includes detail on objectives and how the PIR will be conducted but more detail could be provided on the PIR planned for the Luxembourg protocol and further detail will be needed for the secondary legislation IAs.

### Regulatory Policy Committee

For further information, please contact [regulatoryenquiries@rpc.gov.uk](mailto:regulatoryenquiries@rpc.gov.uk). Follow us on Twitter [@RPC\\_Gov\\_UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website [www.gov.uk/rpc](http://www.gov.uk/rpc). To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#).

Two Committee members did not participate in the scrutiny of this case to avoid a potential conflict of interest.