Title: The Railways Infrastructure (Access and Management) and (Licensing of Undertakings) Regulations 2015 **IA No: DfT00300** **Lead department or agency:** Department for Transport **Other departments or agencies:**	Impact Assessment (IA) **Date:** 19/10/2015 **Stage:** Final **Source of intervention:** EU **Type of measure:** Secondary Legislation **Contact for enquiries**: Michelle Cole - 0207 944 3015 Tim Vale - 0207 944 5068

Summary: Intervention and Options

RPC: Fit for purpose

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB in 2014 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
NQ	NQ	NQ	No	N/A

What is the problem under consideration? Why is government intervention necessary?

EU Directive 2012/34/EU largely consolidates existing EU legislation which has already been implemented in UK legislation.

The UK has a responsibility under the Treaty on the Functioning of the European Union to adequately implement the Directive.

The main changes which the Directive makes are:

- Changes to the provisions governing access to service facilities. These are facilities which are connected to the main railway network and which provide services to railway undertakings. The Directive bring some additional services into scope and makes minor changes to the rules on access to all service facilities. However, it also contains a number of safeguards which reduce the risk of those operators suffering loss of revenue or profit or incurring significant additional costs.
- Additional rules for operators of service facilities which apply where one body or firm is dominant. In the current GB market it appears unlikely that a dominant player will emerge, removing the impact of this change.
- Accounting separation. Where a company provides both rail passenger and rail freight services, it is required to present separate accounts for these activities. However, GB companies generally provide either rail passenger or rail freight services.

What are the policy objectives and the intended effects?

Government policy when implementing EU legislation is to minimise additional costs while maximising potential benefits. In particular, we intend to take advantage of all optional provisions in the Directive which provide further flexibility or reduce requirements on businesses.

The UK's implementation of the Directive also needs to keep the risk of infringement proceedings against the UK at an acceptable level .

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Five options have been considered. Option 4 is the preferred option because it best meets the policy objectives set out above. It involves implementing all the mandatory requirements in the Directive by making minimal amendments to existing GB legislation with which stakeholders are already familiar thereby lowering the cost of adaptation compared to completely new Regulations based on copy out.. It also takes advantage of all the optional provisions which allow further flexibility and reduce burdens on businesses.

The other options considered were:

Option 1 "do nothing".

Option 2 implements the Directive by "copy out".

Options 3-5 implement the Directive by amending existing GB legislation.

Option 3 implements only the mandatory requirements.

Option 4 implements the mandatory requirements plus those optional provisions which provide further flexibility to GB businesses and public authorities.

Options 5 implements the mandatory requirements plus all optional provisions (including those which increase burdens).

Will the policy be reviewed? It will be reviewed. **If applicable, set review date: 30/12/2020**					
Does implementation go beyond minimum EU requirements?			Yes (optional provisions are implemented to reduce burdens in GB)		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small**Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** NA	**Non-traded:** NA	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: Claire Perry MP Date: 21st June 2016

Summary: Analysis & Evidence — Policy Option 2 (Option 1 is do nothing)

Description: Implement the Directive through a "copy out" approach

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	**High:** NA	**Best Estimate: NQ**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ	NA	NQ	**NQ**
High	NQ		NQ	**NQ**
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised costs by 'main affected groups'

Due to limitations in the available evidence base, it has not been possible to monetise the potential costs identified under Option 2.[1] During public consultation, consultees were invited to provide evidence on the likely costs that would be incurred as a result of using copy out to transpose the Directive, however, stakeholders that responded to the consultation were unable to articulate a monetary value to these changes. The fact that no monetary value was provided suggests that the changes are unlikely to threaten the viability of consultees' businesses.

Other key non-monetised costs by 'main affected groups'

The Directive largely consolidates or "recasts" existing EU legislation. This is implemented in GB by the Railways Infrastructure (Access and Management) Regulations 2005 and the Railway (Licensing of Undertakings) Regulations 2005. Businesses and public authorities are very familiar with these Regulations. However, because a pure copy-out approach was not followed in these Regulations, if a completely new set of Regulations based on copy-out is introduced those organisations would incur significant costs in adapting to the new Regulations, particularly in trying to ascertain whether and when the new wording was intended to convey a new meaning. A new set of regulations based on copy out would also give the impression that significant changes had been made rather than a "Recast" or consolidation exercise. The exact scale of these additional costs is uncertain and would vary from one business to another. Other costs are as per Option 3.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	NA	NQ	**NQ**
High	NQ		NQ	**NQ**
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised benefits by 'main affected groups'

Due to limitations in the available evidence base (as explained in footnote 1), it has not been possible to monetise the potential benefits identified under Option 2. During public consultation consultees were unable to provide monetary evidence on the likely benefits that would be incurred as a result of the changes. The fact that no monetary value was provided suggests that the changes are unlikely to create significant benefits or opportunities.

Other key non-monetised benefits by 'main affected groups'

The benefits from implementing this Directive will be minimised because previous EU legislation which this Directive consolidates has already been fully implemented in GB. However, the genuinely new provisions which have not previously been implemented could bring additional benefits in terms of increasing competition and opening access to certain rail service facilities. The benefits are identical to Option 3.

Key assumptions/sensitivities/risks	**Discount rate**	3.5%

[1] Prior to publically consulting, the Department had further discussions with rail stakeholders, and we have set out the reasons why it was not possible to quantify the impacts in section 6 - Monetised and non-monetised costs and benefits of each option (on page 12).

Given the limitations of the available evidence base, it has not been possible to monetise accurately the costs or benefits that have been identified in this impact assessment. As this has not been possible, a full qualitative description of the cost or benefit is provided in the evidence base of this impact assessment. Although given the opportunity during consultation to provide evidence to monetise the costs and benefits described in this impact assessment, consultees were not able to articulate a monetary value.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			**In scope of OITO?**	**Measure qualifies as**
Costs: NQ	**Benefits:** NQ	**Net:** NQ	No	NA

Summary: Analysis & Evidence — Policy Option 3

Description: Amend the 2005 Regulations to implement only the mandatory provisions (listed in Themes 1 – 7 below) without implementing any optional provisions (including optional scope exclusions in Themes 8-10).

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	**High:** NA	**Best Estimate:** NQ

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ	NA	NQ	**NQ**
High	NQ		NQ	**NQ**
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised costs by 'main affected groups'

Due to limitations in the available evidence base (as explained in footnote 1), it has not been possible to monetise the potential costs identified under Option 3. During public consultation, consultees were invited to provide evidence of the likely costs that would be incurred as a result of using copy out to transpose the Directive, however, stakeholders that responded to the consultation were unable to articulate the monetary value of these changes. The fact that no monetary value was provided suggests that the changes are unlikely to threaten the viability of consultees' businesses.

Other key non-monetised costs by 'main affected groups'

1) Where a railway undertaking, infrastructure manager or service facility operator is required to comply with new provisions in the Regulations, they are likely to incur administrative costs in putting the processes in place in order to comply. However, the scale of these costs is uncertain and would vary from one railway undertaking or service facility operator to another. This element of the costs is the same as in options 4 and 5.

2) This option only implements the mandatory provisions in the Directive. By not taking advantage of optional provisions to reduce burdens, this would be inconsistent with the guiding principles of EU Regulation to reduce costs and burdens wherever possible.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	NA	NQ	**NQ**
High	NQ		NQ	**NQ**
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised benefits by 'main affected groups'

Due to limitations in the available evidence base (as explained in footnote 1), it has not been possible to monetise the potential benefits identified under Option 3. During public consultation consultees were unable to provide monetary evidence on the likely benefits that would be incurred as a result of the changes. The fact that no monetary value was provided suggests that the changes are unlikely to create significant benefits or opportunities.

Other key non-monetised benefits by 'main affected groups'

Implementing these provisions by amending the 2005 Regulations would fulfil the primary objective of increasing competition in the rail sector. This option would also have the advantage of not requiring businesses and public bodies to adapt to a completely new set of "copy out" regulations. It would avoid the high chance of infringement proceedings in the event of non-implementation.

Key assumptions/sensitivities/risks **Discount rate** 3.5%

Given the limitations of the available evidence base, it has not been possible to monetise accurately the costs or benefits that have been identified in this impact assessment. As this has not been possible, a full qualitative description of the cost or benefit is provided in the evidence base of this impact assessment. Although given the opportunity during consultation to provide evidence to monetise the costs and benefits described in this impact assessment, consultees were not able to articulate a monetary value.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: NQ	**Benefits:** NQ	**Net:** NQ	No	N/A

Summary: Analysis & Evidence

Policy Option 4

Description: Amend the 2005 Regulations to (a) implement the new mandatory provisions (Themes 1 - 7); and (b) implement all optional provisions which reduce burdens in UK (Themes 8 and 9)

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	**High:** NA	**Best Estimate:** NQ

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ	NA	NQ	**NQ**
High	NQ		NQ	**NQ**
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised costs by 'main affected groups'

Due to limitations in the available evidence base (as explained in footnote 1), it has not been possible to monetise the potential costs identified under Option 4. During public consultation, consultees were invited to provide evidence on the likely costs that would be incurred as a result of using copy out to transpose the Directive, however, stakeholders that responded to the consultation were unable to articulate the monetary value of using copy out. The fact that no monetary value was provided suggests that the changes are unlikely to threaten the viability of consultees' businesses.

Other key non-monetised costs by 'main affected groups'

Where a railway undertaking, infrastructure manager or service facility operator is required to comply with new provisions in the Regulations, they are likely to incur administrative costs in putting the processes in place in order to comply. However, the scale of these costs is uncertain and would vary from one railway undertaking or service facility operator to another.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	NA	NQ	**NQ**
High	NQ		NQ	**NQ**
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised benefits by 'main affected groups'

Due to limitations in the available evidence base (as explained in footnote 1), it has not been possible to monetise the potential benefits identified under Option 4. During public consultation, consultees were unable to provide monetary evidence on the likely benefits that would be incurred as a result of the changes. The fact that no monetary value was provided suggests that the changes are unlikely to create significant benefits or opportunities.

Other key non-monetised benefits by 'main affected groups'

Implementing these provisions by amending the 2005 Regulations would fulfil the primary objective of increasing competition in the rail sector. This option would also have the advantage of not requiring businesses and public bodies to adapt to completely new "copy out" regulations. It would avoid the high chance of infringement proceedings in the event of non-implementation. It would also further reduce burdens on businesses by implementing the optional provisions, allowing further flexibility.

Key assumptions/sensitivities/risks **Discount rate** 3.5%

Given the limitations of the available evidence base, it has not been possible to monetise accurately the costs or benefits that have been identified in this impact assessment. As this has not been possible, a full qualitative description of the cost or benefit is provided in the evidence base of this impact assessment. Although given the opportunity during consultation to provide evidence to monetise the costs and benefits described in this impact assessment, consultees were not able to articulate a monetary value.

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: NQ	**Benefits:** NQ	**Net:** NQ	No	N/A

Summary: Analysis & Evidence

Policy Option 5

Description: Amend the 2005 Regulations to implement in accordance with option 4, but implementing all optional provisions (including those listed in theme 10 which goes beyond a minimum or copy out approach and does not offer the best value for money overall).

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	**High:** NA	**Best Estimate:** NQ

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ	NA	NQ	**NQ**
High	NQ		NQ	**NQ**
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised costs by 'main affected groups'

Due to limitations in the available evidence base (as explained in footnote 1), it has not been possible to monetise the potential costs identified under Option 5. During public consultation, consultees were invited to provide evidence on the likely costs that would be incurred as a result of using copy out to transpose the Directive, however, stakeholders that responded to the consultation were unable to articulate the monetary value of these changes. The fact that no monetary value was provided suggests that the changes are unlikely to threaten the viability of consultees' businesses.

Other key non-monetised costs by 'main affected groups'

This option would implement all mandatory and optional provisions in the Directive. By failing to take advantage of flexibility not to implement some burdensome provisions the costs on businesses would increase under this option. This would not be consistent with the guiding principles of EU Regulation on gold plating. Costs are otherwise as per option 4.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	NA	NQ	**NQ**
High	NQ		NQ	**NQ**
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised benefits by 'main affected groups'

Due to limitations in the available evidence base (as explained in footnote 1), it has not been possible to monetise the potential benefits identified under Option 5. During public consultation consultees were unable to provide monetary evidence on the likely benefits that would be incurred as a result of the changes. The fact that no monetary value was provided suggests that the changes are unlikely to create significant benefits or opportunities.

Other key non-monetised benefits by 'main affected groups'

This option would also have the advantage of not requiring businesses and public bodies to adapt to completely new "copy out" regulations. It would avoid the high chance of infringement proceedings in the event of non-implementation as it does implement mandatory provisions, however, the benefits by implementing the optional provisions in option 4 are reduced significantly by also introducing optional provisions that increase burdens.

Key assumptions/sensitivities/risks **Discount rate** 3.5%

Given the limitations of the available evidence base, it has not been possible to monetise accurately the costs or benefits that have been identified in this impact assessment. As this has not been possible, a full qualitative description of the cost or benefit is provided in the evidence base of this impact assessment. Although given the opportunity during consultation to provide evidence to monetise the costs and benefits described in this impact assessment, consultees were not able to articulate a monetary value.

BUSINESS ASSESSMENT (Option 5)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: NQ	**Benefits:** NQ	**Net:** NQ	Yes	N/A

Evidence Base

1. Background

EU economic rail legislation has been heavily amended and expanded since its beginnings in the early 1990s. The result was a complex web of measures using a range of different instruments.

Directive 2012/34/EU of the European Parliament of 21 November 2012 establishing a single European railway area (recast), ("**the Directive**") repeals and consolidates ("recasts") a tranche of this legislation into one place for ease of reference, but also makes changes to substantive law in some places.

The relevant areas of EU legislation in place prior to the Directive are currently implemented in Great Britain by regulations concerned with access and management of railway infrastructure[2] and the licensing of railway undertakings[3] ("**the 2005 Regulations**"); the regulatory and funding provisions that were put in place during GB rail privatisation via the 1993 Railways Act and subsequently the Railways Act 2005; as well as legislation in respect of the Channel Tunnel[4]. These have been further amended as required.

Although the Directive repeals, re-enacts and consolidates existing EU legislation, much of this involves no substantive change in the law. This Impact Assessment does not consider areas where existing EU legislation has not been substantively changed (and is therefore already implemented in the UK). This applies also where optional provisions remain the same.

Under provisions included in the Directive, the European Commission is required to adopt a number "implementing or delegated acts" (i.e. tertiary legislation applicable in the UK and other EU Member States) which may, broadly, set out further detail regarding the implementation of provisions. Implementing Acts and Delegated Acts are separately negotiated by the European Commission and Member States, and have a direct effect in GB, therefore do not form a part of this consultation. A table summarising the expected Implementing Acts and Delegated Acts, what they cover and timing of implementation where it is known has been included at Annex C.

This impact assessment covers the impact of the Directive on Great Britain (GB). Transport is a devolved matter for Northern Ireland, whose devolved authorities have elected to implement pre-Directive provisions via statutory instruments applicable to Northern Ireland[5]. Since the Directive will be implemented in respect of Northern Ireland by the Department for Regional Development (DRD), impacts in Northern Ireland are not considered as part of this impact assessment.

EU legislation in place prior to the Recast Directive has been implemented separately in respect of the Channel Tunnel, via bi-national regulation, given the force of law by a statutory instrument[6].

The European Commission questioned the implementation of various provisions in the First Railway Package with respect to the Channel Tunnel. It alleged that the Intergovernmental Commission (IGC) lacked the ability to take regulatory decisions on its own initiative and lacked the necessary regulatory independence. Furthermore, the European Commission alleged that there was no method of apportioning infrastructure costs in place that was compliant with EU legislation. The UK and French Governments did not accept the Commission's views. However, as the UK and France are required by Regulation 55 of Directive 2012/34/EU to establish a single national regulatory body for the railway sector which is a standalone authority distinct from any other public or private entity in any event, after negotiations, an agreement was reached with the UK and France agreeing to do the following:

- Transfer economic regulation of the Tunnel to the domestic regulators, the Office of Rail and Road (ORR) and the Autorité de Régulation des Activités Ferroviaires (ARAF);

2 The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049)

3 The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050).

4 The Channel Tunnel (International Arrangements) Order 2005 (S.I. 2005/3207) (as amended) implements the relevant legislation applicable to the Channel Tunnel.

5 The Railways Infrastructure (Access Management, and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 and the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations (Northern Ireland) 2009

6 See footnote 3.

- Make it express that the extent of the regulators enforcement powers was sufficient, in particular with regard to own initiative investigations;
- Put the charging framework for the Tunnel in a single instrument;

In addition, the above transfer of regulatory functions required some specific provisions regarding cooperation between the two national regulators.

In order to implement these changes, the Intergovernmental Commission made, on 23rd March 2015, a new bi-national regulation. That bi-national regulation will be implemented in UK law by the draft 2015 Regulations. The draft 2015 Regulations will contain provisions to amend the scope of those 2015 Regulations to include the Channel Tunnel, once the bi-national regulation is in force. The draft 2015 Regulations will also include some transitional provisions to deal with the fact that initially the Tunnel will remain outside the scope, until the bi-national comes into force. The result of these measures will mean that the 2015 Regulations will apply to the Channel Tunnel (except where exemptions under EU law apply).

2. Problem under Consideration

The Directive is designed to consolidate EU legislation, and to improve the competitive position of the railway sector, so it can compete effectively with other transport modes and support wider economic growth.

The Directive covers a wide range of policy areas and tries to address several market failures in the EU railway market such as:

1. Low levels of competition within rail.
2. Low levels of public and private investment in railways.
3. Inadequate regulatory oversight by national authorities within EU Member States, often with insufficient independence, resources and power.

However, none of these market failures are considered to be significant issues in the GB domestic railway market, nor is there a significant need for legislative consolidation, as, unlike EU legislation, GB implementing legislation was largely consolidated in 2005, and is not notably confusing. The extensive use of competitive tendering for passenger rail franchise contracts and the existence of open access passenger services means that GB has one of the most competitive railway markets in the EU. Competition in the rail freight market is also greater than in much of the rest of the EU, and there is no single dominant rail freight operator at present. GB is currently planning record levels of investment in infrastructure. In the ORR, GB already has an independent and adequately resourced regulator equipped with the necessary powers to regulate the market.

Although the UK is required to implement the Directive, its national railway market does not face the market failures which the Directive is designed to address. This is likely to reduce the impacts of implementation. The UK is required under its obligations in the EU treaties to implement adequately EU legislation such as the Directive. However, the UK has some flexibility in designing implementing measures in order to maximise benefits and minimise costs.

3. Rationale for intervention

Fair and open competition within the rail sector provides benefits in increasing the sector's competitiveness compared to other modes and in decreasing the costs of rail transport to its users and funders such as passengers, freight shippers and taxpayers. The changes introduced by the Directive seek to support such competition, for example by improving transparency of access to service facilities, and increasing independence of the regulatory body and infrastructure manager in terms of decision making.

The UK was required to implement the Directive by 16 June 2015; whilst this is running late, we anticipate implementing by the end of this year. While the impacts associated with the implementation of this Directive are likely to be smaller than in other, less liberalised EU railway markets, and most of this Directive repeats existing EU provisions without changing them, certain provisions in the Directive are

new and are not implemented by existing domestic GB legislation. These could also bring additional benefits in terms of increasing competition and opening access to certain rail service facilities.

These provisions could also impose some additional costs on individual entities, which will need to be weighed carefully against any wider benefits. Aside from the costs that would result from non-intervention and consequent infringement proceedings, we consider that government intervention is needed to ensure the realisation of the benefits that are likely to accrue from the Directive though we also note the need to minimise any avoidable costs.

4. Policy objectives

The main objectives in implementing the Directive are to maximise the benefits which accrue in GB both to the railway sector and to the wider economy by:

- Increasing competition within the rail sector through fostering non-discriminatory access to rail-related service facilities for all railway undertakings (train operating companies that provide services for the transport of goods or passengers by rail) and improving the transparency of conditions for accessing rail-related service facilities.
- Greater consistency in the regulatory environment between EU countries, which will mean greater certainty for UK businesses that are operating or wish to operate in more than one EU country.
- Ensuring implementing measures minimise avoidable costs and burdens on GB, for example by implementing optional provisions in the Directive which provide further flexibility or reduce requirements with which GB organisations will need to comply.
- Reduce the risk of infringement proceedings against the UK in respect of its implementation of the Directive within GB.

5. Description of options considered (including do nothing)

5.1. Option 1: Do nothing

If the UK adopts a "do nothing" approach in respect of GB, and does not amend its existing legislation to reflect the amendments made in the Directive (including the requirements of implementing or delegated acts), it is highly likely that the European Commission would conclude that the UK has failed to implement the Directive. The Commission would then initiate infringement proceedings against the UK with a high probability of a judgement against the UK in the Court of Justice of the European Union. Eventually non-compliance could lead to significant fines. The UK would also incur significant costs in contesting a case before the Court.

The costs and subsequent fines are unlikely to represent good value for money, given the low chance of success in such a case and the availability of other options for implementation. If, following a court judgement, the UK was required to amend its domestic legislation rapidly to comply with that judgement, there would be less time to consult UK stakeholders on amendments than if the UK implements the Directive within the implementation deadline.

The benefits of implementation described in Option 4 would also not accrue in the UK in respect of GB. For these reasons this option is not the preferred approach.

5.2. Option 2: Implement the Directive through a "copy out" approach.

According to the guiding principles of EU Regulation[7], the preferred approach to implementing EU legislation for GB in general is to adopt the requirements of a Directive by "copying it out" in domestic law. It is also policy to minimise the burdens imposed by implementing Regulations on businesses and public bodies.

Existing EU railway legislation, which this Directive consolidates, was implemented in respect of GB mainland by the 2005 Regulations. Businesses, such as railway infrastructure managers, train operating companies and public bodies such as GB's independent rail regulator, the ORR, are highly familiar with the structure and drafting of those regulations and associated guidance. However, a strict copy out

[7] Guiding principles for EU Regulation

approach was not followed in the 2005 Regulations by the UK Government, and the same is true of the bi-national regulation for the Channel Tunnel. This means that following a copy out approach to implement the relatively minor changes made by this Directive would involve repealing the two 2005 Regulations, and replacing them with a single document containing new and unfamiliar terminology and structure, often where no change in meaning was intended. Some provisions, e.g. requiring "Member States" to take action, would not be implemented. If we copy out the Directive both businesses and public bodies would incur costs in adapting to the new "copy out" Regulations, particularly in trying to ascertain whether and when the new wording was intended to convey a new meaning.

Although this option would comply with the requirements of the Directive and is likely to meet the policy objective of increasing competition in the rail sector, it does not meet the policy objective of minimising avoidable costs and burdens, and therefore this option is not the preferred option.

5.3. Option 3: Amend the 2005 Regulations to implement only the mandatory provisions (listed in Themes 1 – 7 below) without implementing any optional provisions (including optional scope exclusions in Themes 8-10).

Mandatory obligations in the Recast Directive have been grouped into Themes 1 to 7 in this document. Implementing these provisions by amending the 2005 Regulations would fulfil the primary objective of increasing competition in the rail sector. This option would also have the advantage of not requiring businesses and public bodies to adapt to completely new "copy out" regulations. It would avoid the high chance of infringement proceedings in the event of non-implementation.

Although this would avoid the implementation of the optional provisions which are assessed not to be of benefit to industry, this option would also not enable GB to take advantage of those optional provisions in the Directive which *would* further reduce burdens on businesses and public bodies in GB. This would be inconsistent with the Guiding Principles for EU Regulation to reduce costs and burdens wherever possible. Option 3 is therefore not the preferred option.

5.4. Option 4 (preferred option): Amend the 2005 Regulations to (a) implement the new mandatory provisions (Themes 1 - 7); and (b) implement all optional provisions which reduce burdens in UK (Themes 8 and 9)

The costs and benefits of this option have been assessed on the basis that full implementation of this Directive would involve implementing all mandatory provisions plus those optional provisions that reduce the burdens on businesses, individuals and public bodies.

The adoption of some of these optional provisions would benefit industry by offering more flexibility, cost effectiveness or clarity. This approach will avoid the gold plating that would arise from not taking full advantage of any derogation. This is therefore the preferred option for implementation, as it fully achieves the policy objectives set out in section 4.

This will mean going beyond a minimum or copy out approach in some cases but the effect will be deregulatory.

The costs and benefits of adopting mandatory provisions are the same as for Option 3 set out in Section 6.6. The incremental costs and benefits of implementing beneficial optional provisions are set out in Section 6.7.

5.5. Option 5: Amend the 2005 Regulations to implement in accordance with option 4, but implementing all optional provisions (including those listed in theme 10, which goes beyond a minimum or copy out approach and does not offer the best value for money overall).

The optional provision listed in Theme 10 has been assessed in section 6.8 as either increasing burdens or introducing additional requirements on businesses, individuals or public bodies. Implementing this

provision would therefore be inconsistent with wider policy on gold plating and the increase of burden on businesses. This does not fulfil the policy objectives and is therefore not the preferred option.

Option 4 is preferred because it ensures the regulations allow maximum flexibility to achieve the lowest cost or greatest benefit where possible.

A table summarising the different elements of the proposal has been included at Annex B. The estimated scale of costs has been included in the table. It was anticipated that these costs would be amended after public consultation to correctly reflect the responses received during consultation, however, in their responses to the consultation stakeholders were unable to articulate a monetary value to the costs and benefits of these changes, and therefore in many cases the Department has been unable to quantify the costs.

6. Monetised and non-monetised costs and benefits of each option (including administrative burden)

6.1. Available evidence base

Due to the limitations of the available evidence base, it has not been possible to monetise most of the costs and benefits that have been identified in this impact assessment. With the time and resources that the Department had available to gather the information, and when taking into account the anticipated impact of the changes which will be introduced by these measures, we also consider that the effort made to gather the evidence has been proportionate. The Department understands that there are a number of stakeholders there were not previously in scope of the 2005 Regulations that will now come in scope of the 2015 Regulations. We do not hold data on who these stakeholders are, the size of their business or how many will be affected. This is because many of the changes which we expect to have the most impact are on service facility operators who have previously been outside the scope of the Regulations, making it difficult to estimate accurately the cost impact. The Department anticipated that these stakeholders would respond to the public consultation, which would assist in providing the Department with the information it would need to more accurately assess the cost impact to service facility operators, however we received only one response from this section of the rail industry and the main concern in this response was that the Department provide guidance to assist service facility operators in understanding the Regulations. The only way to gather additional evidence would be to seek further information directly from stakeholders. It does not appear proportionate to impose this cost burden on the sector given that the responses to the consultation focus on the need for guidance and do not suggest that the Regulations will undermine the viability of consultees' businesses.

Before publically consulting, the Department contacted some stakeholders to ask if they could provide information to assist the Department in assessing the cost impact of some of these measures to their business, however, these stakeholders were concerned about providing information that was commercial in confidence. The lack of data held by the Department in these areas, and the difficulty the Department has had in obtaining quantitative data both before and after consultation has limited the Department's ability to estimate correctly the cost impact and benefit for the majority of provisions. Where it has not been possible to monetise a cost or benefit, a full qualitative description of the cost or benefit has been provided.

In order to strengthen the evidence base, the public consultation asked consultees for additional evidence on the costs and benefits of the policy options that are discussed in this impact assessment. Having considered the responses received, which did not provide the additional evidence required to monetise the costs and benefits, we have not been able to improve the monetisation of costs and benefits in this impact assessment. However, stakeholders that responded to the consultation did provide evidence which generally strengthened the qualitative analysis which has been undertaken in the sections below.

6.2. Stakeholder evidence gathering exercise

Prior to public consultation the Department carried out a pre-consultation evidence gathering exercise in Spring 2014, including meeting with rail stakeholders, to gain a broad understanding of the likely monetised cost impact of the various measures. The Department contacted a number of rail stakeholders, who are also operators of service facilities, to ask if they were able to provide information which would assist the Department in quantifying the impact of the changes introduced by the Directive, particularly where there has been an increase in scope in terms of Theme 1 outlined below. When we asked for further information before consultation, the Department focussed on the new measures

introduced by Theme 1 as this is where we expected the most change for rail stakeholders, and also where the Department lacked the most information. Unfortunately these stakeholders were not able to provide any further information, either stating it was commercially sensitive, or that until the Regulations had been made and they were able to interpret them it was difficult to understand if they were impacted, and therefore they could not quantify any costs.

As with the key monetised costs, the Department also asked rail stakeholders if they could provide any information as to the monetary benefits that they might experience as a result of the changes which the Directive made, again focussing on those measures detailed in Theme 1. However, stakeholders were unable to disclose this information stating commercial confidence reasons. They were also unable to comment on the benefits they might see from other operators now being in scope of the regulations due to these changes until it was clearer which operators would now come in scope of the requirements set out in Theme 1.

Therefore although this exercise was useful in generating qualitative information it was not possible for stakeholders to provide detailed information on monetised costs or benefits.

Where it has not been possible to monetise a cost or benefit, a qualitative description of the cost or benefit has been provide, and the consultation responses that were received have helped the Department to either confirm our initial qualitative assessment, or to strengthen it.

In this impact assessment, where the magnitude of marginal costs/benefits are described, the following terms should be used as a guide:

- No / zero – costs/benefits equal to zero
- Negligible - costs/benefits close to zero

Where the magnitude of costs/benefits has not been mentioned, it is because we have insufficient evidence to comment. We had hoped that consultation would assist in providing further evidence to allow the Department to comment on these areas further.

Consultation questions for each of the changes outlined in section 6 included (but were not limited to):

- Would the stakeholder be considered as a small or micro business under the definition given on in the glossary?
- Does the stakeholder believe themselves to be in scope of the change?
- If they do believe they are in scope of the change what is the cost impact? (We also asked them to provide evidence of how they came to that conclusion).
- What other impacts will they experience?
- Consultees were provided with a copy of the table at Annex B to assist them in setting out the costs of each change, however, most of these were not completed in the responses received.

6.3. Risks, benefits, costs and assumptions

The impact of the Directive on GB's rail sector will be limited because the UK has fully implemented the predecessor Directives to this Directive, as detailed above.

Where the existing GB legislation, guidance or practice aligns with the approach set out in the Directive we have assumed that the costs incurred in implementing the measures will be of a transitional nature only and will not be material.

Overall, we assume that familiarisation costs will be relatively low, because much of the legislation has not changed. However, there are likely to be some familiarisation costs for service facility operators that were previously out of scope of the 2005 Regulations and will now be required to understand their obligations under the 2015 Regulations. Stakeholders defined as a service facility operator that are already in scope of the 2005 Regulations will be required to become familiar with the new provisions set out in the themes below. We have not been able to monetise this, however based on the fact that many of the requirements introduced by the new provisions already exist in the UK, we expect the familiarisation costs to be low.

The Department also plans to work with the ORR and Network Rail to produce guidance which will assist stakeholders in becoming familiar with the 2015 Regulations. The responses received to the public consultation did not provide any additional evidence to inform the Department how many businesses are expected to be affected by coming under the scope of the 2015 Regulations, and therefore it has not been possible to estimate the expected scale of the familiarisation costs. However, the consultation did establish

those areas which were of most concern to stakeholders and has assisted the Department in gaining a better understanding of which areas should be focussed on for future stakeholder engagement.

Some provisions in the Directive provide for subsequent elaboration of detailed methodologies and approaches through the development by the Commission of Implementing or Delegated Acts. Because these Acts are yet to be developed, it is not possible to calculate the costs or benefits of the associated provisions to infrastructure managers, railway undertakings or facility operators in respect of track and facility access charges. A table setting out the Implementing Acts expected to be developed, and the timing where known, has been included as Annex C.

6.4. Option 1: Do nothing.

The main reason why the 'Do nothing' approach is not the preferred approach relates to the likely foregone benefits. If the UK adopts a "do nothing" approach in respect of GB, and does not amend its existing legislation to reflect the amendments made in the Directive (including the requirements of implementing or delegated acts), it is highly likely that the benefits of implementation described in Option 4 would not accrue in the UK in respect of GB.

In addition, it is highly likely that the European Commission would conclude that the UK has failed to implement the Directive, and would then initiate infringement proceedings against the UK with a high probability of a judgement against the UK in the Court of Justice of the European Union. Eventually non-compliance could lead to significant fines. For these reasons this option is not the preferred approach.

6.5. Option 2: Implement the Directive through a "copy out" approach.

Following a copy out approach for the relatively minor changes made by this Directive would introduce new and unfamiliar terminology inconsistent with the existing 2005 Regulations. This option has therefore not been considered further here for reasons set out in section 5.2.

6.6. Option 3: Amend the 2005 Regulations to implement only the mandatory provisions (listed in Themes 1 – 7 below) without implementing any optional provisions (including optional scope exclusions in Themes 8-10).

The impact of implementing option 3 (only the mandatory provisions) have been assessed below.

6.6.1. Theme 1: mandatory measures to foster non-discriminatory access to rail-related services for all railway undertakings (Article 2.1, Article 13, Article 6, Article 31, Annex II, Article 36), classified in this document as 1A to 1I.

Additional obligations for operators of service facilities

1A Access to Annex II point 2 service facilities (Article 13)

The Directive requires "operators of service facilities" (which includes infrastructure managers where these are responsible for managing a service facility or supplying the relevant service) to supply in a non-discriminatory manner to all railway undertakings access, including track access, to a list of facilities listed in point 2 of Annex II, and to the services supplied in these facilities, where they exist. To this list has been added the following:

a. travel information display and suitable location for ticketing services in passenger stations;
b. shunting facilities in marshalling yards;
c. maintenance facilities, with the exception of heavy maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities;
d. other technical facilities, including cleaning and washing facilities;
e. relief facilities;
f. the supply of fuel in refuelling facilities in these facilities, charges for which shall be shown on the invoices separately.

1B Access to Annex II point 3 "additional services"

If the operator of the service facility provides any of the services listed in Annex II point 3, it must provide them in a non-discriminatory way to any railway undertaking which requests it. This now includes:

"C*harges for* traction current *shall be shown on the invoices separately from charges for using the electrical supply equipment, without prejudice to the application of Directive 2009/72/EC*."

1C Access to new Annex II point 4 "ancillary services"

If the operator of the service facility provides any of the services listed in Annex II point 4 to any railway undertaking other than itself, it must provide these services to other railway undertakings that request them. These are known as ancillary services and now include:

a. Ticketing services in passenger stations; and

b. Heavy maintenance services supplied in maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities.

Costs and benefits of 1A to 1C

Some of the services listed are already in scope of existing GB regulation and practice. We therefore expect there to be no impact in relation to information, ticketing or light maintenance facilities.

Railway undertakings are already provided with access to travel information display and ticketing services in GB passenger stations. The addition of this requirement will have no impact.

Access to light maintenance depots is already regulated by Section 17 of the Railways Act as a type of "railway facility". "Other technical facilities including, cleaning and washing facilities" the "supply of fuel in refuelling facilities" are provided within light maintenance depots in GB[8]. These Regulations will therefore have no impact on operators of these types of facility or on railway undertakings using those facilities.

The impact of all other services which have been brought into scope of the Regulations is as follows.

We estimate that shunting services within twenty-three marshalling yards will be brought into scope.[9] It has not been possible to identify the number of service facilities in GB which would fall under "heavy maintenance facilities" or "relief facilities".

While the services listed in 1A to 1C have been brought into scope, operators of service facilities are able to charge for those services at a level which reflects their costs plus a reasonable profit. If those operators' costs increase they would be able to increase their charges. We therefore do not expect those operators to be unable to cover their costs a result of the changes to scope. There are restrictions on operators overcharging due to the limits of reasonable profit. The competitive nature of the UK rail services market reduces the likelihood that current levels of profit are unreasonable.

Operators of service facilities which do not currently provide these services are not required to introduce them. They are also not required to invest in expanding the service facility if they do not have sufficient capacity in the facility to meet a request for services. We therefore do not expect these operators to incur any additional costs as a result of the widening of the changes to scope.

There are potential benefits for railway undertakings as they may be able to access some services where spare capacity exists in a service facility. This may also result in an increase in revenue for operators of the service facilities.

Operators are likely to incur minimal administrative costs where they only operate one of the service facilities which have been added to the Directive, as they may not already have a process in place for providing access to the service, or charging for use of it. It has become clear during the consultation that there will be a number of stakeholders that will be affected by this. These stakeholders were previously out of scope of the regulations, however, the Department is not clear how many stakeholders will now come in scope and as many of them have not responded to the consultation at all, it is not possible to estimate accurately the costs/benefits to these stakeholders.

In order to communicate these changes in scope to stakeholders, the Department will update the guidance on the scope of the Regulations which was provided in 2005. This will provide clarity about changes in scope.

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[8] See Network Rail Network Statement Section 5.2.3 "Connected Facilities" http://www.networkrail.co.uk/4273_ConnectedFacilitiesDetails.doc?cd=5&cd=1

[9] See Network Rail list of Connected Facilities http://www.networkrail.co.uk/4273_ConnectedFacilitiesDetails.doc?cd=5&cd=1

The Department will also work with the infrastructure managers and the ORR as required to produce ORR guidance on what will be expected of service facility operators and the information they will need to provide to comply with the regulations. Further workshops are planned to allow stakeholders to input into and assist with the production of this guidance.

1D New obligations regarding refusal of access to Annex II point 2 service facilities and consequent appeals

There are new obligations for the operator of these service facilities in respect of these facilities:

- The operator is now required to answer requests for access within a reasonable time limit (Article 13(4)) to be specified by the ORR.
- The wording describing the circumstances under which a request may be rejected has been slightly changed, from when “viable alternatives under market conditions exist” to when “there are viable alternatives allowing [the applicant] to operate the freight or passenger service concerned on the same or alternative route under economically acceptable conditions” (Article 13(4)). ‘Viable alternative' is defined as access to another service facility which is economically acceptable to the railway undertaking, and allows it to operate the service concerned (Article 3(10)).

  NB: The Directive also states that the operator is not required to make investments in resources or facilities in order to accommodate requests (Article 13(4)).
- If conflicting requests for supply of services are received the operator must attempt to meet all such requests on the basis of the needs demonstrated (Article 13(5)).

The Directive gives applicants the right to complain to the regulatory body where their request to access one of the facilities is rejected. The regulatory body is then required to examine the case and take action, where appropriate, to ensure the applicant is granted access to an appropriate part of the capacity (Article 13(5)).

Costs and benefits of 1D

We estimate that around 300 service facilities will be in scope of these changes.

The costs which a facility operator could incur in becoming compliant with these obligations will depend on a number of factors including whether the changes to the wording around "viable" alternative are likely to have a material impact on the number of applications which are accepted or rejected; the likelihood of the ORR upholding an access complaint made against the operator on the basis of the new wording around “viable alternative”; the action taken by the regulatory body in the event of an access complaint, such as a direction to provide access; and the mitigating factors which the regulatory body considers in such a complaint.

These factors will vary considerably on a case-by-case basis and it is not possible to predict their impact with certainty. The most significant change is to the wording around viable alternative, but even this only alters an existing provision rather than introducing a completely new concept.

The greatest costs to a facility operator are likely to occur in the event of a successful access complaint based on the new requirements in Article 13(4) and (5). This could result in the ORR taking action to ensure that the appropriate part of the capacity is granted to the applicant. This might result in damages from breach of contract with incumbent service users, depending on the terms of current contracts. Even if an appeal were successful the overall impact on the income or expenditure of the operator is unclear because it could result in costs or savings for either party and would depend on individual circumstances. The service operator would be able to mitigate against potential costs going forward by seeking legal advice/appropriate insurance and contractual terms with service users. Potential costs could be particularly relevant, however, if freight operating companies have made investments in service facilities on the basis that they would serve certain operators and traffic flows.

In their consultation responses some freight operating companies stated that they were concerned about the impact to their business in these circumstances specifically, but did not provide information about what form that impact would take. Therefore the Department has taken the concerns raised into consideration during discussions with the ORR as they update their guidance to take account of the changes, paying particular attention to the issues raised around Article 13 and the access to service facilities.

There are likely to be no transitional costs to the ORR in setting up a facility access complaint system because such a system is already in place in GB. However, the number of cases could increase because the Directive widens the rights of access compared with the current Railways Infrastructure (Access and Management) Regulations. It also widens the type and therefore number of facilities in scope of the Regulations. This could result in increased costs associated with preparing and analysing complaints for railway undertakings, infrastructure managers, service facility operators and for the ORR. It has not been possible to estimate the increase in the number of appeals or their complexity, nor is it possible to quantify their costs.

As the consultation responses which were received have provided mainly qualitative as opposed to quantitative evidence it has not been possible to estimate the costs and benefits of this provision any more accurately. The absence of responses estimating a cost impact suggests that these changes are unlikely to have an immediate detrimental effect on consultees. However, it is clear that this is an area where further information and guidance is needed to enable service facility operators to plan their business and understand the potential impact of the changes. We plan to mitigate the concerns raised by closely liaising with the ORR and infrastructure managers to assist the ORR as required in producing guidance which will be beneficial to stakeholders in terms of providing clarity.[10]

1E Obligations for a service facility operator of certain facilities where they are categorised as being dominant.

The operators of service facilities which are under direct or indirect control of a firm or body which is active and holds a dominant position in a national railway transport services market for which the facility is used now have to fulfil additional requirements for certain facilities. These facilities are passenger stations; freight terminals; marshalling yards/train formation facilities; storage sidings; maritime and inland port facilities; refuelling facilities and supply of fuel in these facilities (items (a), (b), (c), (d), (g), (i) of point 2 in Annex II).

If they are categorised as dominant the operator must:

a. be organised in such a way that the management of service facilities is independent in organisational and decision-making terms (This is not a requirement for legal separation and can be fulfilled by the entity having distinct divisions).

b. have separate accounts, including separate balance sheets and profit and loss accounts, for all service facilities referred to in point 2 of Annex II.

c. justify any refusal of access in writing and indicate viable alternatives.

If the service facility is operated by an infrastructure manager or if the operator of such facility is under the direct or indirect control of an infrastructure manager, the requirements in a and b will be met if the essential functions of the infrastructure manger (allocation and charging) are entrusted to bodies or firms which do not provide rail transport services, in accordance with Article 7.

Costs and benefits of 1E

It is unclear whether any UK service facility operator currently would be categorised as under the direct or indirect control of a body or firm which is active and holds a dominant position in the national railway transport services market under this article (also referenced in recitals 6 and 26 of the Directive), but it appears unlikely, given the liberalised structure of the GB railway market - three rail competing rail freight undertakings operate service facilities and train services. This differs significantly from some other EU member states where the state-owned operator continues to operate the majority of facilities and freight services.

The situation is similar in the passenger market where all franchised passenger operators lease and operate stations and none can be said to be dominant. Evidence and views were sought in the public consultation about whether any railway undertaking is in scope of this, however, many consultees were unable to

[10] Prior to consultation the Department contacted some stakeholders to ask for information to assist the Department to quantify the new obligations around refusal of access. However stakeholders were unable to provide information to assist the Department as they advised that it was very much dependent on how "viable alternative" is defined and what "on the basis of demonstrated need" means. Until stakeholders have more information on how these might be interpreted it has been very difficult for them to assess the actual impact, it will be for the ORR provide some guidance to assist with this, and their decisions will be made on a cases by cases basis once the Regulations have entered into force.

comment as it is not clear from the copy out text whether they would be in scope . Therefore costs and benefits are likely to be negligible to zero.

There are also no anticipated costs for infrastructure managers because they already comply with the requirements of independence set out in Article 7.

The Department intends to work with the ORR to raise awareness of the concerns raised during consultation, and provide further clarity to stakeholders where possible.

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1F Obligations on all operators of service facilities relating to charging

The Directive amends the criteria which facility operators can take into account when setting charges for access to service facilities and for the infrastructure connecting them:

- The charge imposed for track access within service facilities (point 2, Annex II) and the supply of services in such facilities shall not exceed the cost of providing it, plus a reasonable profit (Article 31(7)). Previously the requirement was for the operator to take account of the competitive situation of rail transport when setting charges.
- The operator of a service facility must provide the regulatory body with necessary information on the charges imposed (Article 31(2)). Previously this only applied to the infrastructure manager.
- The operator must use revenue from those charges to fund their business (Article 31(1)). Previously this applied only to the infrastructure manager.

Costs and benefits of 1F

The provisions require the charges for a facility operator's services to be calculated on the basis of the costs of providing the service plus a reasonable profit. It is possible that this could reduce facility access revenue for facility operators. However, the definition of "cost" here is very broad, i.e. it is not limited to "cost directly incurred" and can therefore include elements of overhead absorption and investment cost recovery. Revenue is therefore only likely to be reduced if the operator is currently unable to demonstrate that its level of profit from operating the facility is reasonable. The competitive nature of the UK rail services market reduces the likelihood that current levels of profit are unreasonable.

In practical terms there may not be a significant difference between the existing pricing mechanism and that in the Directive. The ORR already regulate access arrangements for stations. In terms of a service facility operator providing information to the regulatory body on the charges imposed, there may be administrative costs in collecting the appropriate information for the ORR, but these are expected to be negligible. However, they cannot be quantified because the level of cost would depend on the information required by the ORR at the time requested.

How service facility operators use the charges paid to them for the use of those facilities may be affected, depending on how those service facility operators currently use those funds, and whether this is assessed by the ORR as funding their business. The responses which were received to the public consultation did not provide the Department with evidence to conclude that this would negatively affect the use of revenue from the charges of access to service facilities.

Consultees also did not provide any evidence to suggest that this was an area of concern for them, therefore we believe that the costs of this requirement will be negligible.[11]

1G Requirement for operators of service facilities to advertise an unused annex II point 2 facility for lease or rent

Where a facility referred to in point 2 of Annex II has not been in use for at least two consecutive years, and a railway undertaking has expressed interest, on the basis of demonstrated needs, in access to the facility, the owner shall publicise the operation of the facility as being for lease or rent as a service facility, unless ongoing "reconversion" is demonstrated (Article 13(6)). As "reconversion" is not an

[11] Prior to consultation the Department contacted some service facility operators to ask them if they could provide information on how they currently charged for access to their service facilities, and whether the profit made was put back into funding their business, however, this areas was especially sensitive for stakeholders as they considered this information commercially sensitive and were therefore unable to provide the Department with any information which could assist with the quantification of the possible costs of this measure.

English term we have interpreted this as “ongoing building works” for the purpose of turning the facility into another type of service facility.

Costs and benefits of 1G

The obligation to advertise a facility for lease or rent if it has not been used for a particular period of time is likely to result in a cost for the facility owner associated with advertising that facility’s availability and negotiation of a lease. However, presumably the owners may in due course receive rental income in mitigation. There would presumably be no obligation to accept a lease offer which was not market value. It would be unlikely to result in the loss of a facility which may be have been acquired with a view to expansion and serving future traffic flows where this requires building work. The owner would also have the option of meeting the request for services in the meantime. There are possible benefits if this provision results in more facilities being leased to third parties and becoming operational, or assuring that services are provided where they are capable of being provided. However, the level of demand for additional facilities is unclear, making it impossible to estimate at this stage how many facilities would be reopened and the extent to which those reopened facilities would be used. Consultees did not provide any evidence during consultation to quantify the costs/benefits, and therefore we believe that there are no service facility operators that would come under the scope of the requirement to advertise a facility for lease or rent.

One response to the consultation supported this change, however, none of the responses received provided evidence to suggest that consultees would benefit from facilities becoming available as a result of this requirement and therefore we assume that the costs here will be negligible.

1H Railway undertakings to keep separate accounts for freight and passenger services

Railway undertakings which operate both rail freight and rail passenger services are now required to keep and publish separate profit and loss accounts and balance sheets for activities relating to freight and passenger transport services (Article 6(3)).

Funds paid for activities relating to public service contracts have to be shown separately in the accounts and cannot be transferred to activities relating to the provision of other transport services or any other business.

Costs and benefits of 1H

The accounting separation provisions widen those already in place for infrastructure management and train operations. The affected railway undertakings would incur costs and an initial and recurring administrative burden through the new requirement.

Currently eight train operating companies hold both passenger and freight licences. However, it is not clear that all these operators currently operate both types of service. For example, at least three freight operating companies also operate passenger charter trains, for example providing traction for rail enthusiast heritage trains. These charter operations tend to be small scale so the requirement for accounting separation could represent an additional burden to these operators. In the absence of detailed knowledge of these operations or of the costs of producing an additional set of accounts it has not been possible to quantify these costs. Additional information about these was sought in the public consultation document, however stakeholders that responded were unable to quantify the costs associated with this, and were more concerned with the issue of whether they were actually in scope of the requirement. The impact would also depend on whether the railway undertakings could be excluded from the scope of this requirement in accordance with the mandatory scope exclusions (more detail in section 6.6.7.). In order to minimise any adverse effects of this provision the Department intends to revise the existing guidance on the scope of the Regulations.

1I Infrastructure managers must impose a levy for regularly unused train paths

The introduction of a reservation charge when applicants reserve capacity which they then fail to use remains optional. However, the Directive adds that where a reservation charge is being applied to applicants it is now mandatory in the event of an applicant’s *regular failure* to use allocated paths or part of them. The criteria for application of this charge must now be published in the network statement by the infrastructure manager (Article 36)

Costs and Benefits of 1I

GB infrastructure managers do not currently apply this non-usage charge. If they decide to do so there are likely to be administrative costs both for the ORR and the infrastructure managers when determining the

criteria for regular non-usage and in designing the process. The impact on railway undertakings will depend on how the concept of regular non-use is interpreted by the infrastructure manager and the ORR.

This could result in increased benefits for the infrastructure manager where in the past they have not been able to charge for non-use of the capacity which they have already allocated. It would also discourage railway undertakings from applying for capacity if they do not really need to use it, therefore preventing capacity from being allocated (and therefore unavailable to other applicants) unnecessarily.

The consultation responses received were unable to quantify the costs of this provision, therefore we are unable to estimate the costs of this more accurately. Consultees that responded were keen to ensure that the Department interprets this Article as containing an optional reservation charge, which when imposed, is mandatory where there is regular failure to use allocated capacity. The Department's initial view was that the reservation charge was mandatory in all circumstances, this is likely to have resulted in an increase in costs to the freight industry. However from the consultation exercise the Department now believes that the Directive could be interpreted either way. Having taken into account the responses received to the consultation, we have amended the drafting in the 2015 Regulations to provide that the reservation charge is mandatory for regular failure to use capacity, only where a reservation charge is already in place, which we believe will minimise any adverse impact on industry of this measure.

6.6.2. Theme 2: mandatory measures to improve the transparency of rail market access conditions (Articles 31, 30, 32, 27, Annex VI), classified in this document as 2A – 2C.

2A Apportionment of costs by infrastructure managers (Article 30(8))

Infrastructure managers are now explicitly required to establish a method apportioning costs to the *different categories* of services offered to train operators. The method will have to be updated from time to time on the basis of best international practice.

Costs and benefits of 2A

Costs and benefits of this measure are likely to be negligible because GB Infrastructure managers already use methods of this sort to apportion costs to different categories of services.

The consultation responses received that some infrastructure managers who would be coming into scope of the 2015 Regulations in the future would need to become compliant with this requirement, however they did not provide any evidence during consultation to quantify any costs/benefits, and therefore we assume the costs here to be negligible.

2B Information in network statements (Article 27)

Infrastructure managers are required to make their Network Statement available through an online portal set up by EU infrastructure managers. The Network Statement is required to include the following new elements (see Annex IV and Article 27):

- information on or website links to information concerning conditions and charges for access to and supply of service facilities listed in point 2 of Annex II (Article 27(2))
- a reference to the infrastructure registers, which the statement must be consistent with;
- procedures to request information on scheduling maintenance work;
- the dispute resolution system;
- conditions by which account is taken utilisation in determining allocation priorities;
- a section on application for licences
- a model agreement for the conclusion for framework agreements.

The Directive requires the infrastructure manager's network statement to be published in at least 2 EU Member State languages. (Article 27(1))

The regulatory body is required to check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager which can be used to discriminate against applicants. (Article 56(2))

Costs and benefits of 2B

The requirement to translate network statements would result in HS1 and Network Rail incurring transitional and recurring policy costs. Eurotunnel's network statement is published in French as well as English and so would incur no additional cost.

From a quote provided to DfT in 2012, it is estimated that the translation into French of Network Rail's existing 80 page Network Statement document would cost under £10,000. HS1 would also need to translate its statement, which is shorter than that of NR. The one off cost of translating both network statements into another EU Member State language is likely to cost under £20,000 with a likely "refresh" each year assumed to cost around £10,000 total for all documents.

Benefits could arise because of the availability of the network statement in another language, such as increased competition on the network or increased utilisation of the network because of greater awareness of the services offered. However, given the widespread use and understanding of English as a business language in Western Europe, it is very unlikely that the absence of a network statement in another language is currently affecting levels of utilisation of Infrastructure Managers' networks and facilities. The benefits of this provision are therefore assumed to be negligible.

The inclusion of information about access to and charges for service facilities could result in greater utilisation of those service facilities, because of increased awareness that such facilities are available. This could result in benefits for operators of service facilities in the form of increased revenues. It could also result in policy benefits for train operators because greater knowledge of facilities available could result in them being able to run additional services. Wider economic benefits could also accrue from more efficient utilisation of existing service facilities. More efficient utilisation could also improve the competitiveness of rail compared with other modes of transport.

However, it could also result in an increase in requests for access to service facilities, not all of which could be met, which could in turn cause an increase in complaints to the ORR and the parties involved in the complaint would incur administrative costs from the complaint and decision process.

In the absence of data about current utilisation of service facilities, about the level of awareness by market participants of services available and about the level of any unsatisfied demand for services offered in service facilities it is not possible to quantify the costs or benefits of this measure at this stage.

During the public consultation, consultees were given the opportunity to provide evidence to supply the Department with the cost/benefit to their business from these measures. Network Rail as the UK's largest infrastructure manager already publish their network statement in English and French, and they also already comply with the majority of other new elements to the Network Statement, so this significantly reduces the cost impact to them. Consultees were unable to quantify any costs/benefits of this change, however a number of responses indicated concerns about the information that service facility operators would be required to provide for inclusion in the Network Statement. The Department is working with the ORR and the infrastructure managers to develop the guidance to be produced by the ORR. We have already started informal discussions with stakeholders who are content that their points will be taken into account in developing this guidance and that they will have a chance to formally comment when the ORR publically consults on the guidance.

2C Mark ups: evaluation by Infrastructure managers of list of rail market segments (Article 32)

The Directive states that mark-ups may be levied "to obtain full recovery of the costs incurred by the infrastructure manager", "while guaranteeing optimal competitiveness of rail market segments". Previously the requirement was "while guaranteeing optimum competitiveness in particular of international rail freight". The market segments which must at least be considered by the infrastructure manager are now listed in Annex VI(1):

- Passenger vs freight services
- Trains carrying dangerous goods vs other freight trains
- Domestic vs international services
- Combined transport vs direct trains
- Urban or regional vs interurban passenger services
- Block trains vs single wagonload trains
- Regular vs occasional train services

As with previous legislation, the level of mark-ups must not exclude market segments which can pay at least the cost that is directly incurred plus a rate of return which the market can bear. The infrastructure manager is required to evaluate the relevance of mark-ups for different market segments considering at least the pairs listed in Annex VI and retaining the relevant ones. The list of market segments defined by infrastructure managers must contain at least the three following segments: freight services, passenger services within the framework of a public service contract and other passenger services.

Costs and benefits of 2C

There may be costs to the ORR and to all infrastructure managers (including HS1 and Eurotunnel) in evaluating the mandatory list of sectors to be considered for mark-up because this list is longer and of a different nature from that used in respect of the GB network. Finally, additional track access charges could apply if some of the additional passenger and freight market sectors which are evaluated are determined to be "able to bear" additional track access charges arising from this measure. However, the effect of this is not possible to calculate at this stage because it will depend on the sector involved and the assessment of its ability to pay additional charges.

Consultation responses received did not provide any additional evidence to quantify the costs/benefits of this measure and therefore the Department has not been able to assess the impact of this measure further. Consultation responses did however raise concerns about mark ups and a number of freight operators were concerned that freight operators might be considered as being able to pay a mark-up. This would have the effect of increasing the cost of rail freight and reducing its competitiveness against road freight. This is not something that could be resolved in the 2015 Regulations because, in line with the guiding principles of EU Regulation, we have used copy out, and it will also very much depend on the assessment undertaken by the ORR and infrastructure managers after the Regulations have been made. However we have noted the concerns raised and are informally discussing these with the ORR and infrastructure managers.

6.6.3. Theme 3: mandatory measures enhancing cross-border co-operation and coordination among regulatory bodies and cooperation between infrastructure managers (Article 57, Article 37, Article 14), classified in this document as 3A – 3C.

3A Cooperation: regulatory bodies

The ORR will be required to cooperate with regulatory bodies in other Member States (Article 57). Specifically, it will be required to:

- Participate in a network of regulatory bodies that convenes at regular intervals.
- Exchange information about the main issues of its procedures and of problems interpreting EU law.
- Co-operate for the purposes of mutual assistance in market monitoring, and handling of complaints and investigations.
- Consult with all other EU Member States through which a train path runs when investigating issues of access or charging on an international train path, either because of a complaint or an own initiative investigation.

Costs and benefits of 3A

Costs and benefits are likely to be negligible because these provisions would formalise existing working practices. The ORR is already a member of the "Independent Regulators' Group (IRG) – Rail", a network of independent rail regulatory bodies from twenty-five European countries.

Consultation responses did not provide any further evidence to quantify the costs/benefits of this requirement and therefore we believe that our original assumption that the costs will be negligible is still correct.

3B Cooperation: infrastructure managers

UK infrastructure managers will be required to cooperate with one another and with Infrastructure managers in other member states. Specifically, they will be required to establish appropriate procedures to:

- Co-operate with other infrastructure managers to enable the application of efficient charging schemes (Article 37(1))

- Co-ordinate with other infrastructure managers regarding the charging for train services which cross more than one network. (Article 37(1))
- Aim to guarantee the optimal competitiveness of international rail services and ensure the efficient use of railway networks. (Article 37(1))

They will also be required to:

- Co-operate with other Infrastructure managers to enable mark-ups and performance schemes to be efficiently applied to traffic crossing more than one network on the rail system. (Article 37(2))
- Publish in their network statements the principles and criteria for capacity allocation established with other infrastructure managers in respect of coordinating allocation decisions (Article 40(1))
- Provide sufficient information to the ORR and other Member States' regulatory bodies about the development of common principles and practices for the allocation of infrastructure and from IT-based allocation systems, to allow those bodies to perform regulatory supervision (Article 40(2))

Costs and benefits of 3B

These provisions would largely formalise the existing position under which infrastructure managers cooperate with their European counterparts on the allocation of and charging for international train paths. Costs should be negligible for Network Rail, HS1 and Eurotunnel, because they already cooperate with other infrastructure managers, e.g. through membership of Rail Net Europe (RNE) and of the European Rail Infrastructure Managers' association (EIM). The requirements to coordinate and cooperate with other infrastructure managers could increase the appeal periods and administrative burden on infrastructure managers and thus the costs of their activities, but the effect of these provisions in GB will be minimised by the fact that the number of international services is small in comparison with those on the domestic network. If infrastructure managers do not already provide and publish the principles and criteria specified in Article 40(1) and 40(2) there will be a small but ongoing cost to develop and publish these.

There could be benefits if greater cooperation between infrastructure managers results in more efficient or transparent charging schemes and in more efficient allocation processes. This could result in a reduction in costs for train operating companies. It could also result in an increase in services between GB and other Member States via the Channel Tunnel and France. However, infrastructure managers are already required to cooperate with one another by existing legislation and there exists considerable spare capacity on routes to continental Europe. These provisions are therefore unlikely to result in any significant benefits in GB.

A concern was raised by one small infrastructure manager that will be coming in scope of the 2015 Regulations in the next couple of years that this requirement would cause them an additional burden. However the consultee was not able to provide evidence to quantify their concerns and therefore the Department cannot provide further detail on the costs/benefits of this requirement.

3C Secretary of State must notify cross-border agreements

The Secretary of State is now required to ensure such agreements do not discriminate between railway undertakings or restrict their freedom to operate cross-border services. S/he will be required to notify the European Commission before concluding any new cross-border agreement with other Member States or amending any existing cross border agreement. The European Commission will decide whether such agreements are in compliance with Union law within 4 months of notification (Article 14)

Costs and benefits of 3C

GB has only one international rail link, for which an agreement, the Treaty of Canterbury, is already in place and which has already been submitted to the Commission, alongside the concession agreement for the Channel Tunnel. The administrative cost which DfT would incur in submitting a new or amended agreement would be small (of course, the making the amendment itself would probably be a resource-intensive process;

but this is not a cost deriving from the Recast Directive or its implementation). At present there is no intention to amend the Treaty of Canterbury.

Consultees that responded were unable to calculate the costs/benefits of this measure, and therefore the Department assumes that because there are no intentions to amend the Treaty of Canterbury at this time, the cost of this measure is zero.

6.6.4. Theme 4: mandatory measures relating to member state railway funding and development strategies, and incentives for cost reduction and development (Article 8, Article 30, Article 3, Article 32), classified in this document as 4A and 4B.

4A DfT/infrastructure manager obligations for infrastructure development strategy and contractual agreement

The DfT will be required to:

- Produce an indicative railway infrastructure development strategy for the whole of the UK to be published in 2019 and covering at least 5 years (Article 8(1)).
- Ensure that there is a contractual agreement or an "arrangement within the framework of administrative measures" between the relevant competent authority and the infrastructure manager which incentivises the infrastructure manager to reduce costs and access charges. This shall be for not less than 5 years (Article 30(2)). Previously the agreement had to cover not less than 3 years and regulatory measures could be used as an alternative.
- Ensure that the agreement or arrangement fulfils a list of parameters set out in Annex V of the Directive (Article 30(2))
- Consult applicants and potential applicants for the IM's infrastructure about the contractual agreement before it is signed and publish the contractual agreement within one month of concluding it (Article 30(6))
- Ensure that under normal business conditions and over a reasonable period which shall not exceed a period of five years, the profit and loss accounts of an infrastructure manager shall at least balance income from infrastructure charges, surpluses from other commercial activities, non-refundable incomes from private sources and State funding on the one hand, including advance payments from the State, where appropriate, and infrastructure expenditure, on the other hand. However, the State may under some circumstances require the infrastructure manager to manage his accounts without State funding (Article 8(4)).

The infrastructure Manager will be required to adopt and consult on business plan taking into account development strategy and available funding (Article 8(3)) and making sure it is consistent with the contractual agreement (Article 30(6)). It will also be required to develop and maintain a register of assets which will be used to assess the financing needed to repair or replace them (Article 7).

Costs and benefits of 4A

Costs and benefits will be negligible in respect of Network Rail, HS1 and Eurotunnel in GB because these proposals will, for the most part, formalise the existing position concerning infrastructure development strategies, funding and the contractual structure and asset registers. In respect of domestic networks, the requirement to consult applicants is already fulfilled by the ORR's consultation prior to its final determination on Network Rail and HS1's funding as part of the Periodic Review process. There may be some additional policy costs to Network Rail and Eurotunnel in consulting on its business plan and to the organisations responding to the consultation.

Respondents to the consultation were unable to provide any detail to quantify the costs/benefits of these measures. We are therefore unable to provide an accurate estimate on the costs of these measures, however, we still believe our initial assessment that the costs will be negligible for those infrastructure managers that already come under the scope of the existing 2005 Regulations.

4B ETCS-differentiated track access charges (Article 32.4)

Infrastructure charges on European Train Control System (ETCS) railway corridors specified in Commission Decision 2009/561/EC must be differentiated to give incentives to equip trains with European Train Control System (ETCS) signalling technology. The ETCS corridors to which differentiated

charging will apply are now listed in Commission Decision 2012/88/EU which repealed Commission Decision 2009/561/EU. There are no corridors in the UK.

The Directive also states that the European Commission must adopt implementing measures setting out "modalities" in applying the differentiation of the infrastructure charge. The methodology must not result in the undue distortion of competition between railway undertakings or affect the overall competitiveness of the rail sector.

Costs and benefits of 4B

As there are no ETCS/ERTMS corridors in the UK this track access charge will not have an impact on railway undertakings operating in the UK.

The UK is participating in the comitology process to develop the Implementing Act; however, as this will have direct effect and no proposal has yet been published by the European Commission, it is not considered further here.

6.6.5. Theme 5: mandatory measures enhancing regulatory body competences, independence and powers (Article 55, Article 56), classified in this document as 5A and 5B.

5A More independence of the Regulatory Body

- The Directive requires there to be a single regulatory body to be independent from any other public or private entity (including Government). Member States are required to ensure that the regulatory body is staffed and managed in a way that guarantees its independence.
- Persons in charge of appeals decisions to be taken by the regulatory body must be appointed under clear and transparent rules which guarantee their independence by the national cabinet or council of ministers or by any other public authority which does not directly exert ownership rights over regulated undertakings. Member States must decide whether these persons are appointed for a fixed and renewable term, or on a permanent basis which only allows dismissal for disciplinary reasons not related to their decision-making. They shall be selected in a transparent procedure on the basis of their merit, including appropriate competence and relevant experience, preferably in the field of railways or other network industries.
- Member States must ensure that those persons act independently from any market interest related to the railway sector, and they must not have any interest or business relationship with any of the regulated undertakings or entities, and must not seek or take instructions from any government or other public or private entity when carrying out the functions of the regulatory body.
- To this end those persons must make an annual declaration of direct or indirect interests that could be considered prejudicial to their independence and which could influence the performance of a function. Persons in charge of decisions to be taken by the regulatory body must withdraw from the decision-making process if it concerns an undertaking with which they had a direct or indirect relation during the year before the launch of a procedure.
- After their term in the regulatory body, these persons must not hold any professional position or have any responsibility at any of the regulated undertakings or entities for a period of at least one year.

Costs and benefits of 5A

The costs of the independence provisions will be negligible in respect of the ORR because they are consistent with the existing UK legislation concerning regulatory independence, powers and organisational capacity.

The requirements related to the appointment of persons taking appeals decisions for the ORR will result in no costs for the DfT or for ORR as the existing process for the appointment of the executive board at ORR is already transparent and consistent with the requirements of the Directive.

Procedures will need to be updated to comply with the requirements for ORR staff to declare interests and not to hold positions in regulated undertakings one year after leaving the ORR. However, it is anticipated that the administrative costs associated with these measures will be negligible.

Consultation responses received did not quantify the costs/benefits of these measures and therefore we have not been able to estimate accurately these measures further. We still assume these costs to be negligible.

5B Expanded responsibilities of the regulatory body

- The regulatory body is given powers to monitor the "competitive situation" in the rail services market, including on its own initiative and must "control" the following:
    - the network statement and the criteria set out in it
    - the allocation proceeds and its result
    - the charging scheme
    - the level or structure of infrastructure charges
    - arrangements for access
    - access to and charging for services

  and check whether the network statements have any discriminatory clauses in them or create powers that may be used to discriminate (article 56(2)).
- The regulatory body must also be granted powers to carry out audits or to initiate external audits of Infrastructure managers operators of service facilities and, where relevant, railway undertakings, to verify compliance with accounting separation provisions and is given power to request information listed in Annex VIII for this purpose It may draw conclusions from the accounts about state aid issues. This is without prejudice to the powers of national authorities responsible for state aid issues. If it draws conclusions about state aid it must report those conclusions to those authorities. All bodies must provide accounting information requested by the regulatory body.
- The regulatory body is also required to cooperate with the national safety and licensing authorities (article 56(3)).
- At a minimum every two years the regulatory body is also required to regularly consult representatives of users of the rail freight and passenger transport services, to take into account their views on the rail market (Article 56(7)).
- There are new requirements governing how the regulatory body must process appeals and requests for information:
    - When the regulatory body requests information from the IM, applicants or any third party involved, it must follow the procedure set out in Article 56(8) and is given the power to enforce requests of this sort.
    - If it receives a complaint, the regulatory body must consider it using the decision making procedure set out in Article 56(9) of the Directive. This is without prejudice to the powers of national competition authorities in respect of competition in the railway market. The regulatory body's decision is binding on all parties and cannot be overruled by another administrative body. It should be granted appropriate powers to enforce its decisions. However, its decisions must also be subject to judicial review. Making a judicial review appeal may have the effect of suspending the regulatory body's decision only when the immediate effect of that decision would cause irretrievable or manifestly excessive damages for the appellant. This provision is

without prejudice to the powers of the court hearing the appeal as conferred by constitutional law, where applicable. The regulatory body's decisions must be published.

- When deciding if the economic equilibrium of a public service contract would be compromised by an international service, the regulatory body is required, as appropriate, to ask for such information, consult relevant parties within a month of receipt of the relevant request. It must decide within at least 6 weeks of receipt of the relevant information (Article 11(2)). The Commission is to adopt by 16 December 2016 measures setting out details of the procedure and criteria to be followed for the application of this provisions relating the making of these decisions, and for the provisions relating to the limitation of Member States of access on services on lines covered by public service contracts. (Article 11(4))

Costs and benefits of 5B

The policy costs of these provisions are likely to be negligible in respect of the ORR and regulated undertakings because they are consistent with the existing UK legislation and practice concerning the responsibilities of the regulatory body. Similarly it is not expected that any additional benefits will accrue as a result of these provisions.

The change of scope of a regulatory body's powers to allow it to carry out /initiate audits on facility operators to verify compliance with accounting separation provisions in respect of passenger and freight operations could result in additional costs for any railways undertakings which operate both types of service. However, it is not possible to quantify the costs because they will only be incurred if railway undertakings are in scope of this provision and if the ORR decides to undertake an audit.

In respect of cooperation with the Licensing and Safety authority, the ORR is the authority for both these areas in GB so no further costs will be incurred. In respect of the Channel Tunnel, once it come into scope of the 2015 Regulations, the IGC will continue to act as the Safety Authority therefore the ORR will need to ensure co-operation with IGC in respect of safety. The impact here is likely to be low, because, in particular, the ORR will continue to be represented on the IGC.

Consultees were unable to provide further detail on the costs/benefits of these measures to their business, therefore we anticipate that our original assumption was correct and that the costs of these measures will be negligible.

6.6.6. Theme 6: mandatory measures relating to amendments to licensing regulations (Article 22).

Changes to licensing requirements

Chapter III of the directive contains obligations in relation to licensing, which now include the following changes:

- The Licensing authority is not to consider an undertaking to be financially fit if considerable "or recurrent" tax or social service arrears are owed.
- Article 22 (covering requirements relating to cover for civil liability) now permits the licensing authority to take into account the "specificities and the risk-profile of different types of services, in particular of railway operations for cultural and heritage purposes". It also changes the requirement in relation to the alternatives which a railway undertaking can have instead of insurance. The undertaking is now required to have "adequate guarantees under market conditions for cover", whereas previously it was required to "make equivalent arrangements for cover".
- Article 2(3) requires that if a licencing authority reviews compliance with requirements, the review is to be carried out at least every five years.

Costs and benefits

The costs will be negligible in respect of the GB rail network because they are consistent with existing UK practice concerning railway insurance and licensing requirements.

Railway Undertakings operating on the GB mainline railway normally need an operators' licence as part of their operational certification. Non-mainline operators do not normally need to be licensed so would be likely to qualify for a licence exemption.

Responses to the public consultation did not provide any further evidence to either support or contradict the Department's original assessment or to quantify the costs/benefits, and therefore following consultation we still believe that the costs of these measures are negligible.

6.6.7. Theme 7: mandatory measures relating to scope exclusions (Article 2) classified as 7A and 7B in this document.

7A Exclusion for local (etc) services

Article 2(1) of the Directive excludes from the application of Chapter II certain railway undertakings.

Chapter II provisions broadly comprise obligations relating to management independence of railway undertakings from infrastructure managers; the management of railway undertakings according to commercial principles; the separation of accounts of transport services and infrastructure manager businesses; the keeping of separate accounts relating to freight and passenger services; ensuring that essential functions are provided by bodies that do not provide rail transport services; the rights of access infrastructure by railway undertakings and the limitations on such rights; levies on passenger services; conditions of access to services; Member States obligations relating to cross border agreements; and the monitoring tasks of the Commission.

The previous EU legislation exempted "…*Railway undertakings whose activity is limited to the provision of solely urban, suburban or regional services* ". The Directive exempts "*railway undertakings which only operate urban, suburban or regional services on local and regional stand-alone networks, for transport services on railway infrastructure or on networks intended only for the operation of urban or suburban rail services*".

Notwithstanding the above, when a railway undertaking is under the control of another undertaking or entity performing or integrating rail transport services (other than urban, suburban or regional services) Articles 4, 5 and 6 must be complied with. These requirements include broadly (a) the separation of the infrastructure manager and railway undertaking where the former controls or owns the latter; (b) for the railway undertaking to be operated under commercial conditions; and (c) for separate accounts to be kept for transport services and infrastructure manager services, as well as for freight and passenger transport services (with regard to the relationship between the railway undertaking and the controlling entity).

Costs and benefits of 7A

The policy costs of the mandatory scope exclusions from Chapter II are expected be negligible in respect of the urban or suburban railway undertakings and networks to which they apply because they are very largely aligned with scope exclusions for the operation of rail services in the existing GB legislation.

Responses to the public consultation did not provide any further evidence to either support or contradict the Department's original assessment or to quantify the costs/benefits, and therefore following consultation we still believe that the costs of these measures are negligible.

7B Exclusion for undertakings providing shuttle services through undersea tunnels

In addition, the Directive as a whole is now not applicable to *"undertakings the business of which is limited to providing solely shuttle services for road vehicles through undersea tunnels or to transport operations in the form of shuttle services for road vehicles through such tunnels except Article 6(1) and (4) and Articles 10, 11, 12 and 28* "

Previously Directive 1991/440 (which included provisions relating to the equivalent of Chapter II) excluded "*Undertakings the train operations of which are limited to providing solely shuttle services for road vehicles through the Channel Tunnel*" except for provisions relating to separation between infrastructure management and transport operations; railway undertakings rights to capacity on the infrastructure and services, levies.

The same operations were excluded from the scope Directive 2001/14/EC, which included provisions on allocation of capacity and charging and from Directive 95/18/EC, which dealt with licenses.

The only difference is that "transport operations" in the form of shuttle services through undersea tunnels have been expressly added to the exemption.

The provisions which remain applicable (A 6(1) (4), 10, 11, 12 and 28) are broadly the same, although changes to these articles will now apply to the relevant operations and undertakings.

Costs and benefits of 7B

The mandatory scope exclusions and inclusions relating to undersea tunnels is not likely to impact the Channel Tunnel, because although the wording has been amended, the effect remains the same. Therefore no further analysis has been undertaken for this provision.

Responses to the public consultation did not provide any further evidence to either support or contradict the Department's original assessment or to quantify the costs/benefits, and therefore following consultation we still believe that the cost of this measure is zero.

6.7. Option 4 (preferred option): Amend the 2005 Regulations to (a) implement the new mandatory provisions (Themes 1 - 7); and (b) and implement all optional provisions which reduce burdens in UK (Themes 8 and 9)

In addition to the costs and benefits that have been identified in option 3, implementing the proposed optional provisions (Theme 8 and 9) will afford further flexibility as analysed below.

6.7.1. Theme 8: option to dis-apply ETCS differentiated charging where only ETCS trains run, (Article 32.4).

This optional provision is linked to Theme 4 and extends flexibilities afforded Member States. This provision allows Member States to decide whether or not to apply the differentiation charges to ETCS corridors specified in Decision 2009/561/EC on which only ETCS-equipped trains can run.

Costs and benefits

This provision offers Member States flexibility in deciding not to apply an ETCS-differentiated charging to lines on ETCS corridors if only ETCS-equipped trains can run on those corridors.

Costs and benefits associated with not applying such charges will not be applicable as there are no corridors in the UK.

Responses to the public consultation did not provide any further evidence to either support or contradict the Department's original assessment or to quantify the costs/benefits, and therefore following consultation we still believe that the cost of this measure is zero.

6.7.2. Theme 9: option to take risk profile into account in determining insurance requirements for a licence (Article 22).

This provision gives Member States the option of taking the risk profile of different types of rail services into account in determining insurance requirements for railway undertakings.

Costs and benefits

The costs and benefits of this provision will be negligible because it will formalise the existing position concerning current licencing requirements of the ORR (the GB body which grants licences and licencing

exemptions) which allow licence applicants to apply for variations in third party insurance cover on the basis of a number of factors, including the risk profile of their operation.

Responses to the public consultation did not provide any further evidence either to support or contradict the Department's original assessment or to quantify the costs/benefits, and therefore following consultation we still believe that the cost of this measure is negligible.

6.8. Option 5: Amend the 2005 Regulations to implement in accordance with option 4, but implementing all optional provisions (including those listed in theme 10 which goes beyond a minimum or copy out approach and does not offer the best value for money overall).

In addition to the costs and benefits of options 3 and 4, the costs and benefits of implementing the remaining optional provision in Theme 10 has been assessed below.

Theme 10: option to extend ETCS-differentiated charging beyond ETCS corridors

This provision also allows Member States to extend the differentiation to railways lines which were not specified in Commission Decision 2009/561/EC (Article 32(4))

Costs and benefits

The GB deployment plan for ETCS/ERTMS does not envisage the use of differentiated track access charges. This provision would therefore not be used and no significant costs or benefits would arise. However, by including an option which is not likely to apply, businesses and public authorities could incur some additional transitional costs in interpreting these provisions although they will have no practical impact.

Responses to the public consultation did not provide any further evidence to either support or contradict the Department's original assessment or to quantify the costs/benefits, and therefore following consultation we still believe that the cost of this measure is negligible. However one consultee felt that this provision, if implemented, could provide benefits to railway undertakings that had had their rolling stock fitted for ETCS/ETRMS signalling, and questioned the Department's decision not to implement this provision.

To implement this provision would be gold plating and go against the guiding principles of EU Regulation. We believe that by implementing this optional provision, there may be a benefit of cost reduction to some businesses (those that have ETCS fitted rolling stock), but that this could also result in a cost increase to other businesses (those that do not have ETCS fitted rolling stock). Because the Commission is planning to draft an implementing act which will set out how ETCS differentiated track access charging will work, we also have concerns that to implement this provision would reduce flexibility in the UK in the future and therefore become more burdensome. In order to minimise additional burdens on businesses the Department has taken the decision that it will maintain its original position that this optional provision should not be implemented.

7. Risks and assumptions

7.1. Risks

EU Implementing Acts/Delegated Acts made by the Commission under the Directive are likely to result in significant costs or benefits. These implementing measures are being developed by a different process (comitology involving the European Commission and Member States) and to different timescales from implementation of the Directive itself in GB. To mitigate this risk the DfT is seeking evidence from industry bodies and the ORR on the areas covered by these implementing measures during the comitology process. This will enable DfT to better understand

the impact of draft implementing measures and to negotiate effectively to ensure the best possible outcome for the UK.

7.2. Assumptions

We have made a number of assumptions:

- We have assumed that the regulatory assessment of what "market can bear" in respect of the mark-up process is an accurate reflection of the effects of the measure of the rail market concerned.
- We have assumed that the phrase "modalities" that is used in a number of provisions including those relating to direct costs in Article 31(3) is broadly equivalent to the term methodology in English.
- We have assumed that the existing GB funding and regulatory structure is compatible with the new 2015 regulations, in particular the requirement to have a contractual agreement (as defined) in place fulfilling the requirements of Annex V of the Directive; and that the government funding requirements and rail access charges would be no higher than is the case at present.
- We have assumed that existing provisions in respect to all infrastructure managers comply with the requirements for cost reduction and other infrastructure manager incentives.
- We have assumed that we will not, in the approach under consideration, be seeking also to implement any part of the Directive for Northern Ireland, which has competence for its implementation, and that the Northern Ireland Executive (NIE) will have done so itself, or that we will, under separate legislation, implement any provisions we are called on to implement and have agreed with the NIE.

8. Direct costs and benefits to business calculations (following OITO methodology)

One-in, Two-out

This IA is not in the scope of OITO as it is relates to the implementation of an EU directive, and takes account of the derogations.

According to the Better Regulation Framework Manual, (July 2013) an impact assessment is out of scope of OITO if it is implementing an EU regulation, Decision or Directive, except when:

- Gold-plating: if you are implementing an EU Directive that goes beyond the minimum requirements, resulting in increased costs to business;
- Failure to derogate: if you are introducing or recasting an EU Directive that (i) fails to take available derogations which would reduce costs to business or (ii) uses a derogation which imposes increased costs on business;
- Early implementation of an EU directive.

This impact assessment outlines the minimum mandatory requirements as well as a set of optional provisions.

Our preferred option is the implementation of the minimum requirements as well as those optional provisions which provides greater flexibility to businesses, thereby taking advantage of a derogation which reduces the costs to business.

The costs and benefits to businesses could not be monetised in this post-consultation IA due to the lack of available evidence. The Department was relying on receiving information from consultees to inform the analysis of the costs and benefits post-consultation, however, consultees were unable to quantify the costs/benefits to them of the measures outlined.

9. Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

This is a specialist rail sector policy which is applicable to stakeholders in the rail industry but also owners, operators and customers of service facilities connected to the rail sector. Overall, the policy is

not novel or contentious, because the principles of fair and non-discriminatory access have underpinned the UK rail industry structure since privatisation twenty years ago.

It is expected that the impact will be limited to parties in the rail sector, which are generally members of industry associations, with whom the Department has already been working to raise awareness of these changes. The Department has frequent contact with those industry associations and has used this to inform the level of analysis in this assessment, for example by focusing on the provisions related to access to service facilities which informal and formal consultation suggest are likely to have the greatest impact on the industry.

The service facilities sector is more diverse and possibly more fragmented. The Department is therefore working with representative bodies for this sector in order to raise awareness of the changes and to seek further information. In advance of, during and after public consultation, the Department has held targeted workshops to raise awareness of the issues, seek further evidence and thereby deepen the level of understanding of the impact on service facilities. Although consultees were asked to provide evidence on the costs/benefits of the measures assessed above, many responses did not provide the required information for the Department to more accurately estimate the costs/benefits to businesses.

However, the consultation has highlighted the areas which are of most interest to consultees are the areas which the Department had considered to have the greatest impact (service facilities). It has also, in most cases, confirmed our original assumptions and qualitative analysis.

The approach to this assessment has been considered appropriate to the costs imposed on businesses in this specialist sector. The level of analysis is in line with the depth of available information.

9.1. Wider Impacts

9.1.1. Equalities Assessment

We consider that the proposals will have no specific impact on the following:

- Social, wellbeing or health inequalities;
- The level of crime;
- Levels of skills and education
- Human rights and;
- Responsibilities under the Equality Act 2010 – we have considered the impact on groups with protected characteristics under the Equality Act 2010 and have identified no impact

We have not identified any specific regional or local effects of this proposal or of any cases which would have specific rural or urban consequences.

9.1.2. Environmental

Environmental benefits would normally flow from more use of rail freight if it reflected transfer from road, but in this case it is difficult to predict whether there will be any increase. It is unclear how much will change as a result of changing the access appeal criteria in respect of facilities, requiring service facility operators that are under the direct or indirect control of a body/firm which is active and holds a dominant position in the national railway market transport services to have separate accounts and requiring facility operators to put facility access information on the infrastructure manager's network statement. In principle, better market operation might lead to more competition and reduced costs to customers. Those who responded to both the ORR's freight sites market study of May 2011 and that held by DfT agreed that opening up access to such facilities should have a positive effect. This in turn could lead to

increased freight traffic transferring from the road to rail, however in reality we do not expect there to be any environmental impacts (both positive or negative).

Consultees did not submit any further evidence to negate the above assessment during public consultation.

9.1.3. Competition Assessment

The proposed legislation will not directly or indirectly limit the number of competitors in the rail freight market, nor will it reduce firms' incentives or ability to compete vigorously.

The passenger train operating sector is characterised by competition across an international field of owning groups. There are currently over 20 firms operating passenger services in GB. The GB freight market is primarily served by the road haulage sector, with rail freight accounting for only 9% of total tonne kms moved. The GB rail freight market is dominated by a few large firms, with a number of smaller, but growing other firms.

The Directive applies to all EU Member States and therefore should not affect the relative position of companies in comparable businesses within the EU, and should not put GB rail industry at a competitive disadvantage.

In principle the implementation of the Directives aims to promote a more level playing field for all participants; but the already liberalised regime means the additional benefit will be limited. Evidence and views from stakeholders was sought during public consultation, however no further evidence has been submitted on this issue.

9.1.4. Family Test

We consider that the proposals will have no direct impact on family relationships, and we have therefore not assessed this in further detail.

9.1.5. Small and Micro Businesses Assessment

It is likely that small and micro businesses are in scope of some of the changes which are brought about by the Directive, particularly service facility operators and smaller freight operators. The impact to small and micro businesses will be the same as already assessed in the main body of the impact assessment and we do not think that they will be disproportionately affected. We have noted the mandatory provisions which small and micro businesses are likely to be in scope of below. We had anticipated being able to assess the full impact on these businesses once we had received the public consultation responses, however the Department did not receive any responses from those businesses considered to be a small or micro business and we have therefore been unable to assess the full impact.

The Department did, however, receive a response from the Rail Freight Group who represents some service facility operators, and the main message was a call for the Department to continue communications with service facility operators and to develop guidance to assist service facility operators with understanding their new obligations.

Small and micro businesses are like to be in scope of:

Theme 1: 1A – 1C (additional service facilities added to Annex II), 1D (new obligations for refusal of access to service facilities), 1F (obligations for service facility operators in relations to charging), 1G (advertise an unused service facility for lease), 1H (separate accounts for railway undertakings that operate both passenger and freight), 1I (mandatory levy on railway undertakings for regularly unused train paths).

Theme 2: 2B (information in network statements).

Following public consultation we had hoped to be able to estimate with greater confidence how many small and micro businesses will be affected and in what way, however the lack of responses from businesses considered to be small or micro businesses has prevented us from being able to estimate this with any accuracy. We may be able to adjust mitigations more specifically, but are ultimately

constrained by the requirements of the Directive. Mitigations which were considered and other ongoing mitigations are as follows:

- Activities to raise awareness–workshops with stakeholders, including small and micro businesses, were planned both during and after consultation which provided an opportunity to ask questions and discuss impacts with the Department. We also contacted all licenced railway undertakings and service facility operators (where we knew of them) individually to inform them of the consultation and give them the opportunity to contact DfT directly. We also contacted railway undertakings and service facility operators through representative bodies, such as the Rail Delivery Group (RDG), the Freight Transport Association (FTA) and the Rail Freight Group (RFG).
- Guidance – the ORR will be publishing updated guidance on the Regulations. The Department is also revising its guidance on the scope of the Regulations.
- A minimum of one further pre-implementation workshop is being planned to update all stakeholders, including small and micro businesses on the implementation and provide an opportunity to ask questions.
- The Department holds quarterly meetings on European Policy, and one of the standing agenda items is the implementation of the Directive. The representative bodies mentioned above are invited which gives a regular opportunity to raise concerns and ask questions.

10. Summary and preferred option with description of implementation plan

A summary of options 1 – 3 and option 5 and the reasons these have not been chosen has already been given in section 5.

Preferred option: Option 4 - Amend the 2005 Regulations to (a) implement the new mandatory provisions (Themes 1 - 7); and (b) and implement all optional provisions which reduce burdens in UK (Themes 8 and 9)

By implementing the mandatory provisions and taking advantage of optional provisions which reduce costs or increase benefits, the UK will avoid gold-plating and manage the risk of infraction.

Many of the provisions are in line with existing UK policy and therefore the costs and benefits to industry and other organisations are likely to be low. Due to the lack of data available it has not been possible to undertake a quantitative assessment of the impact of each of the provisions.

Summary of European Commission Impact Assessment

Alongside their proposal for a Directive, the European Commission produced an impact assessment covering the application of their proposal in the EU.

The conclusions of the European Commission's impact assessment are summarised below. Although this provides useful information concerning the EU wide costs and benefits of the proposed measures, we do not consider that they are directly comparable to the GB situation. They are based on the assumption that all re-cast measures will be new to Member States, whereas many (including the UK) included facility access appeals in the transposition of the original Directive and some (again including the UK) have introduced rail funding measures and independent regulators as part their own rail legislation.

Category	Type of impact	Sub-Type of impact	Effect
Economic	Competition and opening of the rail market	Modal Share of Rail Transport	Stabilisation at 2015/16 levels (around 16%)
	New entrants in the rail market	New Entrants in the rail freight market	+ 3-4%
	Market share of new entrants in the rail market	Market share of new entrants in the rail freight market	+2-3%
	Cost of transport	Average operating costs for railway undertakings	-6%
	Administrative costs	Administrative costs for EU and Member States and for the railway sector	Close to 28M€/year
Social	Employment	Employment within the rail industry	1.7M working hours
	Working conditions	Education and mobility of workers in the rail sector	Increased
Environmental	Environmental	Local Air Quality	Up to 4.5000t of NOx and 100t of PM saved every year
		Noise Emissions	0.2M€ of additional external cost
		Climate Change	Up to 530kt of CO2 saved
		Energy Consumption	Up to 120M€ of energy consumption saved

Summary Table of New Provisions

NB: This table gives an overview of the changes and to understand the full detail of each change should be read in conjunction with section 6. We believe that the themes which have been highlighted in yellow are likely to have the most impact.

Theme	Mandatory / Optional	Summary of change	Estimated Cost Scale (£)	Benefit	Impacted parties
1 (1A, 1B and 1C)	Mandatory	Additional service facilities have been added to Annex II paragraphs 2, 3 and 4.	Unable to quantify, however these are likely to be small Operators able to charge users at cost plus reasonable profit	Rights for railway undertakings to access a wider range of service facilities	Operators of service facilities, applicants.
1D	Mandatory	Additional requirements placed upon a service facility operator where they refuse an access request to a service facility which they operate.	Unable to quantify, however as provisions which are similar already exist in the UK, likely to be small.	Increased access rights for railway undertakings requiring access to service facilities.	Operators of service facilities, applicants.
1E	Mandatory	Additional obligations for a service facility operator that is also considered to hold a dominant position in the national railway transport services market.	No operator currently holds a dominant position. No impact.	No impact	Operators of service facilities.
1F	Mandatory	The criteria which service facility operators can take into account when setting charges for access to service facilities and for the infrastructure connecting them has been amended by the Directive.	Likely to be negligible, as the criteria are broad and similar to the existing provisions.	Minimal benefits because of the similarity to existing provisions	Operators of service facilities, applicants.
1G	Mandatory	Adds the requirement for a service facility operator to advertise a service facility from Annex II para 2 for lease or rent where it has not been used for at least 2 consecutive years.	Unable to quantify, although based on the lack of concern raised in consultation responses expected to be negligible.	Possible increase in service facilities being leased by a third party and becoming operational.	Operators of service facilities, applicants.
1H	Mandatory	The Directive now requires railway undertakings which	Unable to quantify, likely to be minimal	No known benefits.	Railway undertakings.

		operate both rail freight and rail passenger services to keep separate profit and loss accounts for each of these services.	given that GB railway undertakings generally operate either passenger or freight services		
1I	Mandatory	The Directive amends the levy of an optional non-usage charge on applicants which were allocated a train path to mandatory in the event of their *regular failure* to use allocated paths or part of them. The criteria for the application of this charge must be published in the network statements.	Likely to be zero given that no UK infrastructure managers currently levies this charge	No impact	ORR, infrastructure managers, applicants for infrastructure.
2A	Mandatory	Infrastructure managers are now explicitly required to establish a method apportioning costs to the *different categories* of services offered to train operators.	0	No known benefits.	Infrastructure managers
2B	Mandatory	The Network Statement must now be published on an online portal, be published in at least 2 EU languages, and be subject to scrutiny by the regulatory body for discriminatory clauses. It is also now required to include an additional 7 elements.	Initial £20,000 with an annual £10,000	Possible increase in the use of service facilities and therefore increase in revenue for infrastructure managers and service facility operators.	All stakeholders
2C	Mandatory	The Directive states that mark-ups may be levied "to obtain full recovery of the costs incurred by the infrastructure manager", "while guaranteeing optimal competitiveness of rail market segments". Previously the requirement was "while guaranteeing optimum competitiveness in particular of international rail freight". The infrastructure manager is required to evaluate the relevance of mark-ups for different market segments considering at least the pairs listed in	Unable to quantify, as it will depend on how the different market segments are evaluated, however we expect the cost impact to be minimal	Possible increase in revenue for the infrastructure manager depending on how the revised list of market segment is considered.	Railway undertakings, infrastructure managers, ORR.

		Annex VI and retaining the relevant ones.			
3A	Mandatory	The ORR will be required to cooperate with regulatory bodies in other Member States.	0	Mandatory co-operation from other Member States could lead to reduced discrimination for RU's wishing to operate in other Member States.	Regulatory body
3B	Mandatory	UK infrastructure managers will be required to cooperate with one another and with infrastructure managers in other member states. Specifically in areas of charging, performance, and capacity allocation.	0	Possible increased efficiencies in charging schemes could result in reduced costs for railway undertakings.	Infrastructure managers
3C	Mandatory	The Secretary of State is now required to ensure such agreements do not discriminate between railway undertakings or restrict their freedom to operate cross-border services. S/he will be required to notify the European Commission before concluding any new cross border agreement with other Member States or amending any existing cross border agreement.	0	No known benefits.	Dept for Transport
4A	Mandatory	There are new obligations for the Department and infrastructure managers to have in place an infrastructure development strategy and contractual agreement.	Unable to quantify, transitional administrative costs from agreeing and publishing these documents	No known benefits.	Dept for Transport, Infrastructure managers
4B	Mandatory	Infrastructure charges on European Train Control System (ETCS) railway corridors specified in Commission Decision 2009/561/EC must be differentiated to give incentives to equip trains with European Train Control System (ETCS) signalling	£0	This could be of benefit to freight operators operating in other Member States, as ETCS trains running on a common system may	Railway undertakings wishing to operate internationally may be affected by this.

		technology. There are no corridors in the UK.		experience less delays with the common technology, however we anticipate the benefits to be small.	
5A	Mandatory	Additional requirements have been added to ensure the independence of the regulatory body from Government, infrastructure managers and railway undertakings.	GB practices are already consistent with the requirements for independence we expect the costs to be negligible.	None	Regulatory body
5B	Mandatory	Additional powers have been added to give the regulatory body more responsibilities to ensure non-discriminatory behaviour, competitiveness in the market, co-operation with safety authorities and an amended process for appeals and information requests.	UK regulatory body is already well established with the powers and responsibilities to ensure these behaviours, we expect the costs to be negligible.	None	Regulatory body, railway undertakings
6	Mandatory	Minor changes to the requirements for the licencing of a railway undertaking.	0	No known benefits.	Railway undertakings
7A	Mandatory	The Directive allows certain railway undertakings to be excluded from Chapter II. Those railway undertakings are: railway undertakings which only operate urban, suburban or regional services on local and regional stand-alone networks, for transport services on railway infrastructure or on networks intended only for the operation of urban or suburban rail services.	0	Reduces the burden for certain railway undertakings where they are excluded from certain parts of the Directive.	Railway undertakings
7B	Mandatory	the Directive as a whole is now not applicable to “undertakings the business of which is limited to providing solely shuttle services	0	Reduces the burden for certain railway undertakings where they are excluded from	Eurotunnel

		for road vehicles through undersea tunnels or to transport operations in the form of shuttle services for road vehicles through such tunnels except Article 6(1) and (4) and Articles 10, 11, 12 and 28.		certain parts of the Directive.	
8	Optional	The Directive allows Member States to decide whether or not to apply the differentiation charges to ETCS corridors specified in Decision 2009/561/EC on which only ETCS-equipped trains can run.	0	No known benefits as there are no ETCS corridors in the UK.	Railway undertakings, infrastructure managers
9	Optional	The Directive gives Member States the option of taking the risk profile of different types of rail services into account in determining insurance requirements for railway undertakings.	0	Allows Member States a certain amount of flexibility.	Railway undertakings, licensing authority (ORR)
10	Optional	The Directive allows Member States to extend ETCS-differentiated charging beyond ETCS corridors to railways lines which were not specified in Commission Decision 2009/561/EC.	0	No known benefits	All stakeholders

Annex C

Implementing Acts Agreed or to be Agreed

Implementing Act	Directive Reference	Description	Date of effect
Commission Implementing Regulation (EU) 2015/171 on certain aspects of the procedure of licensing railway undertakings http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R0171	Art 17 (5)	Deals with financial guarantees, which can be requested by the infrastructure manager from railway undertakings and other entities who apply for capacity on the network.	16/06/2015
Commission Implementing Regulation (EU) No 870/2014 of 11 August 2014 on criteria for applicants for rail infrastructure capacity http://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:32014R0870&qid=1416583035954&rid=3	Art 41 (3)	This Act deals with the process and criteria to which the Infrastructure Manager must adhere when dealing with applications for capacity. An applicant for capacity can be a railway undertaking (RU) but also any other legal entity, such as shippers, freight forwarders and combined transport operators. Given that the licensing process already deals with an RU's financial fitness, the financial guarantees dealt with in this Act are particularly relevant for other types of applicant.	16/06/2015
Commission Implementing Regulation (EU) No 869/2014 of 11 August 2014 on new rail passenger services http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0869	Art 10 (4)	Contains details of the tests to be applied when determining whether an international passenger service is: • Really international or actually national in purpose. • Disruptive to the economic equilibrium of a public service contract.	16/06/2015
Criteria and procedure for framework agreements	Art 42 (8)	Sets out details of the criteria to be used when approving a framework agreement, and co-ordination of new requests and pre-existing agreements.	Unknown Adoption planned Q1 2016
Commission Implementing Regulation (EU) 2015/909 of 12 June	Art 31 (3)	Sets out the principles for the calculation of the cost that is directly incurred as a result of operating the train.	01/08/2015

2015 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32015R0909			
Commission Implementing Regulation (EU) 2015/1100 of 7 July 2015 on the reporting obligations of the Member States in the framework of rail market monitoring http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.181.01.0001.01.ENG	Art 15 (6)	Sets out measures to ensure consistency in the reporting obligations of member states to allow the Commission to monitor the use of the networks and the evolution of the internal rail market, in particular infrastructure charging, capacity allocation, investment, price development and rail transport services quality; services covered by PSO's licensing and the degree of market opening.	01/01/2016
ETCS modulation (TAC ERTMS)	Art 32 (4)	Sets out the modalities to be followed in applying the ETCS differentiated infrastructure charging.	Unknown
Commission Implementing Regulation (EU) 2015/429 of 13 March 2015 setting out the modalities to be followed for the application of the charging for the cost of noise effects http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:32015R0429	Art 31 (5)	Measures setting out the modalities to be followed for the application of charging for the cost of noise effects.	16/06/2015
Access to service facilities and to services	Art 13 (9)	Sets out the procedure and criteria to be followed for access to the service facilities referred to in point 2, 3 and 4 of Annex II of the Directive.	Unknown

Levy on Passenger Railway undertakings	Art 12 (5)	Sets out the details on the procedure and criteria to be followed for the application of the levy on passenger railway undertakings which is intended to compensate the authority for the	Unknown