

Title: Ensuring continuity, certainty and control in the interoperability regime after exiting the EU IA No: DfT00404 RPC Reference No: RPC-4310(1)-DfT Lead department or agency: Department for Transport Other departments or agencies: N/A	Impact Assessment (IA)
	Date: 21/01/2019
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: James Le Grice james.legrice@dft.gov.uk
Summary: Intervention and Options	RPC Opinion: Fit for purpose

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2016 prices)	One-In, Three-Out	Business Impact Target Status
N/A	N/A	N/A	N/A	Qualifying provision

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

New legislation is necessary to amend the Railways (Interoperability) Regulations 2011 to ensure that they continue to function effectively as a result of the UK's withdrawal from the European Union. There are a range of aspects of the railways interoperability regime that will be affected when the UK leaves the EU, and as a result, EU-specific terminology will need to be amended. In particular, the UK's approach to recognition of rail interoperability constituents (tradeable rail products defined in harmonised standards), subsystems and vehicle authorisations requires amendment to reflect the fact that the UK is no longer a member of the EU. Also, since the UK will be producing its own National Technical Specification Notices for rail (NTSNs) to replace EU technical standards, a new NTSN framework will be established, and references to the EU's Technical Specifications for Interoperability (TSIs) in UK implementing legislation will be corrected.

What are the policy objectives and the intended effects?

The overall objectives of the SI are to make sure that the UK's interoperability regime remains operable and that the new NTSN framework is clear and accessible for stakeholders. The establishment of the system of Secretary of State published NTSNs in the SI will also make it possible for the UK to diverge from or keep pace with EU TSIs swiftly and flexibly following exit.

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

Option 0.1: Current arrangements, pre-EU Exit, are such that the Railways (Interoperability) Regulations 2011 require compliance with TSIs and other relevant EU tertiary legislation without the ability to diverge.

Option 0.2: Do nothing. References, terminology and obligations that are appropriate for the UK as an EU Member State, but not as a third country, would remain in the regulations.

Option 1: Amend the interoperability regulations to make appropriate corrections to ensure that aspects of the legal framework will continue to function effectively if the UK is not part of the EU. The amended SI will include provisions establishing a new domestic framework for the publication of UK technical standards and rules, and as such these provisions will be akin to an enabling power.

Option 1 is the Government's preferred outcome, as it ensures certainty, continuity and control in the interoperability regime as the UK exits the EU, and effectively delivers on the referendum result.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU/International requirements?	Yes			
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: n/a		Non-traded: n/a	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Andrew Jones Date: 21.2.19

Summary: Analysis & Evidence

Policy Option 1

Description: Amend the interoperability regulations to fix aspects of the transposing legislation that will no longer function correctly if the UK is not part of the EU.

FULL ECONOMIC ASSESSMENT

Price Base Year: N/A	PV Base Year: N/A	Time Period Years: N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

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

Given that this SI establishes a framework for UK technical standards for rail providing the scope for divergence, rather than specifying new standards itself, it is not possible to provide monetised costs in respect of each potential future divergence between UK and EU standards. A narrative approach has been taken instead for this IA. See Section 3 of the Evidence Base for the rationale.

Other key non-monetised costs by ‘main affected groups’
 As the SI seeks to maintain continuity of the current interoperability regime with EU Exit-related inoperabilities fixed, we do not envisage the creation of new costs beyond those reported in the Impact Assessment for the Railways (Interoperability) Regulations 2011. Costs may be incurred in the future as a result of having to reassess some products from outside the UK against divergent UK standards. However, it is not possible to predict what these costs may be as it is uncertain how, when and the extent to which the UK may diverge.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised benefits by ‘main affected groups’
 Given that this SI establishes a framework for UK technical standards for rail, it is not possible to provide monetised benefits. A narrative approach has been taken instead for this IA. See Section 3 of the Evidence Base for the rationale.

Other key non-monetised benefits by ‘main affected groups’
 There are indirect benefits which may occur as a result of future decisions taken under the framework established for diverging from EU TSIs. The benefits of any divergence would be assessed on a case by case basis. This SI is merely enabling and does not create policy divergence from the EU TSIs.

Key assumptions/sensitivities/risks	Discount rate (%)
It is uncertain which aspects of EU TSIs the UK may wish to diverge from in the future.	

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Annualised) £m:			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

Evidence Base (for summary sheets)

1 Title of Proposal

- 1.1 Ensuring continuity, certainty and control in the interoperability regime after exiting the EU.

2 Purpose and intended effect

3 Background to interoperability

- 3.1 Interoperability is a European initiative to help rail compete more effectively with other modes of transport through a set of common standards and authorisation processes. It is intended to reduce costs and provide safe and uninterrupted movement of trains across Europe through increased compatibility between the different elements of the rail system. The key aims of interoperability can be summarised as follows:

- Ensure compatibility between European railways to allow for through running of trains between Member States;
- Harmonise Member State design assessment, acceptance and approval processes to prevent barriers to trade and to promote a single European market for railway products and services;
- Deliver benefits of standardisation through economies of scale for railway components, improving the economic performance of European railways and the environmental performance of the whole European transport system.

4 *Harmonised standards*

- 4.1 Technical Specifications for Interoperability (TSIs) are common, EU-wide technical and operational standards for new or upgraded rail infrastructure, vehicles and component parts. They set out how components must be built, and compliance assessed and verified, to ensure the interoperability of the rail system. The TSIs may cover one or a number of subsystems, and these documents are subject to revision from time to time after they are first issued.
- 4.2 TSIs are developed by working groups of the European Union Agency for Railways. The UK sends technical experts to participate in the working groups, and votes on the final TSI as a member of the Railways Interoperability and Safety Committee (RISC). Once published in the Official Journal of the European Union, TSIs automatically apply in the UK without the need to create additional regulations.

5 *National rules*

- 5.1 In addition, Member States have the right to produce their own national technical rules to supplement TSIs, such as where there are open points not covered by a TSI. In the UK, national rules are derived from rail industry standards. The Rail Safety and Standards Board (RSSB) proposes which industry standards the DfT should notify to the European Commission as notified national technical rules (NNTR) against each TSI.

6 *Assessment*

- 6.1 Rail projects that come within the scope of interoperability (i.e. projects that are not light rail, metros, trams, local lines, heritage, touristic or private freight) must be certified to conform to the relevant TSIs and NNTRs before they can be authorised to be placed into service on the Great Britain network by the ORR, the National Safety Authority. In Northern Ireland, the Safety Authority is the Department for Infrastructure and for the Channel Tunnel it is the Intergovernmental Commission (IGC). Assessment bodies that certify conformity to TSIs are called notified bodies – the DfT must notify them to the European Commission - and bodies that certify conformity to NNTRs are called designated bodies.

7 The 2008 Interoperability Directive and 2011 Interoperability Regulations

- 7.1 The interoperability regime in the UK is established by the Railways (Interoperability) Regulations 2011 (RIR 2011), as amended in 2013, 2014 and 2015.
- 7.2 These regulations implement European Directive 2008/57/EC on the Interoperability of the Rail System. Key elements of the Directive include:
- Widening the scope of interoperability beyond the Trans European Network (TEN);
 - Enabling a more streamlined 'type' authorisation process for vehicles to reduce burdens on industry and safety authorities;
 - Excluding from the scope of interoperability certain lines and vehicles such as metros, trams and light rail;
 - Allowing Member States to seek additional authorisation of vehicles already authorised in another Member State; and
 - Ensuring the requirements set out in a specification for infrastructure and vehicle registers are met.
- 7.3 RIR 2011 gives the DfT the power to issue derogations against TSIs in defined circumstances, typically if projects are at an advanced stage of development when the TSI was published or if conforming to the applicable TSI would compromise the economic viability of the project. RIR 2011 also gives the DfT the power to decide whether authorisation against a TSI is required for a renewal or upgrade project. The DfT must inform, and in some cases seek the permission of, the European Commission in these decisions.

8 EU Exit SI preparation

- 8.1 It is the duty of a responsible government to prepare for a range of potential outcomes, including the unlikely event of 'no deal'. This piece of legislation therefore seeks to minimise any potential disruption as a result of the UK's departure from the EU, and helps effectively deliver on the referendum result.
- 8.2 Government Departments are preparing Statutory Instruments (SIs) to address specific aspects of EU arrangements. Plans have been designed to provide the flexibility to respond to a negotiated agreement, as well as preparing us for the unlikely eventuality of leaving without a deal.
- 8.3 The UK is starting from a position of high alignment with EU standards and the SI creates an appropriate framework to manage this alignment for rail technical standards. We may diverge as we will no longer be a part of the EU, but this will be managed through the publication of the new standards and we will be able to align with TSIs if it is in the UK's interests.

9 The Railways (Interoperability) (Amendment) (EU Exit) Regulations

- 9.1 The Railways (Interoperability) (Amendment) (EU Exit) Regulations, hereafter referred to as the SI, are intended to ensure that the UK's interoperability regime remains workable and that stakeholders have a clear and accessible technical standards framework post-exit.
- 9.2 In practice, this means correcting certain aspects of the interoperability regime that would no longer function correctly if the UK is not an EU Member State. These 'inoperabilities' include:
- The blanket application of EU technical requirements to the UK, with no option for the UK to align or diverge from these to address specific national needs;
 - The lack of a clear mechanism for recognition of EU assessments of rail products undertaken by third parties;
 - Continued obligations to notify third party conformity assessment bodies to the European Commission or seek the Commission's permission to issue a derogation against a TSI;
 - Obligations remaining on the National Safety Authority to provide information to the European Union Agency for Railways;
 - The inclusion of redundant EU terminology in UK regulations in some cases, such as 'EC Declaration of Conformity' and 'Member State';
- 9.3 The SI will amend the text of RIR 2011 to fix these and other inoperabilities.

- 9.4 The SI will create a new system of UK National Technical Specification Notices (NTSNs) published by the Secretary of State for Transport, to replace EU TSIs. The UK will be able to diverge from or keep pace with EU TSIs via the publication of these notices.
- 9.5 Initially, it is proposed that existing TSI content will be replicated in its entirety within the system of NTSNs. It will then be possible to either diverge from or keep pace with new EU TSIs and in the event of any divergence the intention is that this can be clearly indicated within the text of the UK NTSN.
- 9.6 Decisions on whether it is necessary to keep pace or diverge will be made by the Secretary of State. These decisions will be informed through consultation with industry about the suitability of new TSIs. It is expected that this process will involve the Rail Safety and Standards Board (RSSB) and other stakeholders with an interest in technical standards.
- 9.7 This system will avoid a lengthy freeze in standards in cases where the UK wishes to be aligned with new TSIs. When new TSIs come into force within the EU, they can be adopted via the publication of the NTSN or we may diverge when appropriate.
- 9.8 Where TSIs and NTSNs remain aligned, the UK will continue to recognise conformity assessment certificates issued against the TSI. Where there is divergence, the UK will require any new product affected by the divergent requirement to be assessed against the UK standard by a UK Approved Body. As a result, there may be situations where new products already holding conformity assessment documents issued against TSIs will need to be reassessed for placement on the UK market. The need for reassessment will be clearly identified in the NTSN, and any reassessment would be limited to the area of divergence.
- 9.9 The SI will also require rail vehicles first authorised in the EU to undergo a mandatory additional authorisation for use in the UK. The UK regulations currently make this voluntary. The reassessment of vehicles would be limited to those areas where the UK has diverged from EU standards, plus assessment against any national technical rules in place. This will ensure that vehicles, and component parts, fully comply with the UK's technical standards.

10 Baseline and Rationale for a Narrative Impact Assessment

- 10.1 The SI is limited to amending the existing interoperability regime so that it can continue to function in the event of a 'No Deal' EU Exit scenario. It does not change the scope of the interoperability regime, disapply standards, or make fundamental changes to the existing conformity assessment and authorisation processes.
- 10.2 Since its main purpose is to broadly ensure the continued functioning of the existing regime rather than create a new one, we do not anticipate that it will significantly alter the cost-benefit estimates within the Impact Assessment that was prepared when this regime was established in 2011.
- 10.3 However, the SI contains provisions which function akin to an enabling power, i.e. creating a framework for future divergence from TSIs. This could have impacts beyond those identified in the RIR 2011 Impact Assessment.
- 10.4 The subsequent publication of the UK NTSNs would constitute a regulatory provision in its own right. The impact of each NTSN, including any reassessment of products from outside of the UK that may be necessary, would be considered during the process where the DfT consults with stakeholders. There are well established mechanisms to do this via the RSSB consultation process for changes to railway technical standards.
- 10.5 The DfT is aware from discussions with stakeholders that there may be financial benefits from diverging from certain provisions within existing TSIs. However, any specific areas of divergence will be the subject of further discussions, and it is not possible at this stage to predict exactly how and when the UK may choose to diverge from EU TSIs. The DfT's position is to remain aligned with developments in the EU TSIs unless there is sufficient reason not to do so.
- 10.6 Due to the uncertainty over how and when divergence may occur, it is not possible to provide a fully quantified cost-benefit analysis of the SI.
- 10.7 Instead, this Impact Assessment provides a high level narrative analysis comparing the possible benefits that could be realised through the ability to diverge from EU TSIs against a baseline of

'current arrangements', in which TSIs and other related EU tertiary legislation apply in the UK without the ability to diverge.

11 Option 0.1: Current Arrangements

- 11.1 The baseline comparison is the status quo of RIR 2011 unamended and the existing EU acquis pre-EU Exit. Under current arrangements, TSIs and other EU tertiary legislation related to the Interoperability Directive apply in the UK without the ability to diverge, except where authorised by the European Union.
- 11.2 The original Impact Assessment (IA) produced for the introduction of RIR 2011 assessed the costs and benefits of complying with the interoperability regulations for a period lasting from 2012 to 2022. The IA estimated that the regulations would generate total benefits of £111 million and total costs of £35.8 million, with a net benefit of £75.2 million by 2022.¹ Under Option 0.1, we would not anticipate an increase in the total benefits previously estimated as the regulations would remain unchanged. However, since the IA for RIR 2011 was produced, the DfT has been made aware of additional costs that could arise as a result of compliance with EU TSIs.
- 11.3 Specifically, DfT analysis has indicated that HS2 could incur costs from complying with the platform height requirements specified in the Infrastructure TSI (Regulation 1299/2014/EU). The TSI requires platforms to be built at a height of 550mm or 760mm above the running surface, and includes a UK Specific Case allowing a higher platform height of 915mm.
- 11.4 HS2 has prioritised provision of a level interface between trains and platforms. The intention is both to improve accessibility as well as to reduce dwell time in intermediate stations, enabling a high frequency service.
- 11.5 To achieve a level interface, HS2 platforms would need to have a height of circa 1100mm – as this is expected to be the approximate floor height of the rolling stock. This is higher than the height allowed by the Infrastructure TSI and the NNTR referred to in the Specific Case.
- 11.6 Compliance with the TSI platform height specification would result in longer station dwell times and consequently a less frequent service.
- 11.7 DfT analysis carried out on the most intensively used HS2 station, Old Oak Common, suggests that longer dwell times would lead to losses in revenue and passenger benefits. Furthermore, it is possible that the increased dwell time at Old Oak Common and other stations will lead to a reduction in the number of HS2 services that can be operated once Phase 2b is operational and this could increase costs further.
- 11.8 Additionally, stakeholder evidence submitted for the 2016 Post Implementation Review of RIR 2011 indicated that compliance with the testing requirements in the Noise TSI (Regulation 1304/2014/EU) is increasing costs for the freight wagon industry. Specifically, the TSI's testing requirements mean that new freight wagons must be transported at the project entity's expense to a testing facility in mainland Europe. Stakeholders say that this has already increased the cost of introducing new freight wagons in the UK.

12

Option 0.2: Do Nothing

- 12.1 If the UK were not to enact the proposed legislation (Option 0.2), a flexible framework to permit divergence from EU standards and the ability to keep pace with the frequently changing EU technical standards where that was required, would not be in place. This is likely to result in unintended divergence between UK and EU technical standards, at least for a certain period of time. This is because amending the retained EU legislation that sets out the current TSIs to correct EU references and reflect future EU changes would be a much lengthier process if we were

¹ The HS2 platform heights impacts are appraised over a 67 year period for the full network, from 2026 (the opening of Phase One) to 2093 (60 years after the opening of the full Y network in 2033). In reality, we would expect the capacity benefits that could be lost due to higher platforms to accrue from the opening of Phase 2b, so these are likely to fall into the 60 year period after 2033. In order to be compared to the dwell time impact, a 67 year average has been taken on impacts.

required to make these changes by way of a UK statutory instrument each time a change was required. This is the alternative to a system of Secretary of State published NTSNs.

- 12.2 Option 0.2 would also mean that, post EU Exit, RIR 2011 would contain terminology, references and obligations that would be inappropriate for the UK as a third country. Primarily, these inoperabilities arise from EU legislation applying in the UK as an EU Member State, inclusion of EU terminology (such as 'EC' certificates) in the regulations, requirements to share information with the European Union Agency for Railways, obligations to notify third party conformity assessment bodies and national technical rules to the European Commission and obligations to seek permission from the Commission to grant derogations from TSIs. Further, there would not be effective processes and procedures in place to deal with the recognition and assessment of EU products due to be placed into service or onto the UK market once the UK becomes a third country and there would therefore be unwelcome uncertainty for manufacturers and conformity assessment bodies.
- 12.3 If the inoperabilities in RIR 2011 are not fixed ahead of Exit, rail industry stakeholders could be unclear about their obligations and about which standards are applicable in the UK. This could result in delays to the certification of rail products, and the authorisation of vehicles and subsystems, and an increased risk of challenge for major rail projects depending on these subsystems or vehicles.

13 Option 1: Amend the Interoperability Regulations

- 13.1 The preferred option is to amend RIR 2011 in order to fix the deficiencies in the regulations and, with the establishment of a system of Secretary of State published NTSNs, to put in place a flexible alternative to the amendment of the TSIs contained in retained EU law by way of statutory instrument. These are changes resulting from the UK's exit from the EU, and create a framework for diverging from or maintaining alignment with TSIs in the future.
- 13.2 The SI would not change the scope of interoperability, but rather seek to ensure continuity of the current regime in the event of a 'No Deal' scenario. As such, we do not anticipate that this SI would in itself result in a major departure from the overall costs and benefits for compliance with the interoperability regime estimated in the original IA for RIR 2011.
- 13.3 However, the ability to diverge from EU TSIs through this new framework could result in changes to the cost benefit ratio in the future. As our expected position is to remain aligned with EU TSIs unless there are reasonable grounds for divergence, it is difficult to predict with certainty how and when divergence may occur. The expected impact of each instance of divergence would be assessed by the DfT and take into account the wider industry consultation processes for developing UK NTSNs.
- 13.4 It is expected that the UK will diverge from TSI requirements to allow HS2 to build higher platforms. However, this SI will not create that divergence, and costs and benefits will be assessed separately during amendment of the appropriate NTSN.
- 13.5 The ability to diverge could also allow more flexibility in how rail technical standards are applied in the UK. For example, stakeholders in the freight industry have suggested that costs could be avoided if the UK had the same 'grandfather rights' that the Wagons TSI (EU Regulation 321/2013) confers on projects wishing to use older wagon designs for use in other Member States. This would enable the UK to make continued use of older designs of freight wagons and avoid some of the costs associated with the testing requirements set out in the Noise TSI. These 'grandfather rights' could be conferred through a new UK Specific Case, subject to seeking wider views. This would not be a case of lowering environmental standards on railway noise, but rather enabling flexibilities within a separate TSI similar to those that the European Commission has agreed to for other Member States. The impacts would be assessed and stakeholders consulted before a decision is taken.
- 13.6 Likewise, DfT will explore how the ability to diverge could allow more flexibility in terms of the way specific aspects of NTSNs are applied on particular lines. Stakeholders have previously referred to the need for greater flexibility in terms of the application of TSIs. The ability for the UK to diverge from the EU TSIs may open up further flexibilities such as creating additional UK Specific Cases for certain secondary lines.

- 13.7 These are some examples of how the ability to diverge could create benefits through cost avoidance. Impacts of divergence, including any reassessment that may be needed for new products previously certified against TSIs, will be assessed on a case by case basis as and when the decision is taken to use this power.
- 13.8 The amendment to RIR 2011 relating to mandatory additional vehicle authorisations is not expected to impose an additional cost or administrative burden on rail operators seeking to use vehicles that were first authorised in the EU, as it reflects existing practice. Such operators already usually seek an additional authorisation in the UK, in order to ensure their vehicle's acceptance by the managers of the UK's infrastructure. The proposed move to a mandatory additional authorisation procedure is also consistent with how most Member States apply the authorisation process for vehicles and with our international obligations in this area.

14 Post Implementation Review Plan

- 14.1 As the Principal Regulations already provide for a review clause, the Regulations as amended will be subject to a review no later than five years from the last review (January 2017). The next review will provide an opportunity to evaluate how the framework allowing the UK to diverge from EU technical standards has been used.