

**EXPLANATORY MEMORANDUM TO
THE RAILWAYS INFRASTRUCTURE (ACCESS AND MANAGEMENT)
(AMENDMENT) REGULATIONS 2009**

2009 No. 1122

1. 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument implements a European Directive concerning the liberalisation of international passenger rail services. It extends current European legislation on access rights to infrastructure for international rail freight services and international groupings to all international passenger rail services.

2.2 This instrument also provides for the transfer of certain regulatory responsibilities in relation to High Speed 1 facilities from the Secretary of State to the Office of Rail Regulation (ORR). High Speed 1 is the rail link from St Pancras to the Channel Tunnel. Additionally, the instrument provides for the ORR to pre-approve framework agreements between the infrastructure manager and railway undertakings on the High Speed 1 network.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Directive 2007/58/EC amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for use of railway infrastructure entered into force on 4 December 2007. Member States must transpose this Directive by 3 June 2009. A Transposition Note is attached at Annex A.

4.2 Directive 91/440/EEC, as amended by Directive 2001/14/EC, is transposed in Great Britain by The Railways Infrastructure (Access and Management) Regulations 2005 (SI 2005/3049). The 2005 Regulations set out a number of requirements in relation to: access to railway infrastructure by both international and domestic freight operators; access to terminals and ports; access to the provision of various service facilities; the determination of access charges; the allocation of infrastructure capacity; the right of appeal to a regulatory body; and improving the transparency and efficiency of the organisations responsible for the provision of transport services and the management of railway infrastructure. Except in the case of rail link facilities,

where certain regulatory responsibilities rest with the Secretary of State, the Regulations assign the functions of the regulatory body to the ORR. These include an appeal function in relation to a range of potential disputes, including about access and charging, and also a monitoring role in relation to charges and competition.

4.3 The proposal which resulted in Directive 2007/58/EC was the subject of Explanatory Memorandum (EM) 7147/04 submitted by the Department for Transport to the UK Parliament for consideration on 30 March 2004. The proposal was part of a series of EU proposals known as the 'Third Railway Package'.

4.4 The House of Commons European Scrutiny Committee, which considered the EM on 21 April 2004, recommended that it was of political importance and requested further information. The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B, which considered the EM on 19 April 2004 and requested further information. Tony McNulty MP, then Parliamentary Under Secretary of State for Transport, responded to both Committees on 1 September 2004. The House of Commons European Scrutiny Committee considered the Minister's letter on 9 September 2004, and reported that it may wish to recommend a debate on the proposal when further information became available. The House of Lords Select Committee on the European Union replied on 9 September that it would hold the proposal under consideration pending further developments. Tony McNulty wrote to both Committees again on 24 September 2004. Further Ministerial letters were sent to both Committees on 29 November 2004 and 14 January 2005, enclosing partial Regulatory Impact Assessments. On 19 January 2005, the House of Commons European Scrutiny Committee recommended a debate on the documents in European Standing Committee A. The debate, which took place on 9 March 2005, endorsed the Government approach to the proposal. The House of Lords Select Committee on the European Union cleared the proposal on 26 January 2005.

4.5 Further Ministerial letters were sent to both Committees to keep them informed of the further progress of the proposals in EU negotiations. These were dated 13 July 2005, 25 November 2005, 17 January 2007, 19 February 2007 and 11 July 2007.

4.6 The 2005 Regulations provide for a special regulatory regime in relation to rail link facilities. Whereas regulatory responsibilities in relation to the rest of the National rail network generally reside with the ORR, the 2005 Regulations provide for regulatory responsibilities in relation to rail link facilities to reside in general with the Secretary of State. During the passage through Parliament of the Channel Tunnel Rail Link (Supplementary Provisions) Act 2008, the Government undertook to make the regulatory regime in relation to the High Speed 1 railway between London St Pancras Station and the Channel Tunnel closer to the extant regime in relation to the rest of the National rail network (HL Deb, 13 May 2008, cols 928-933)

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 The Minister of State for Transport has made the following statement regarding Human Rights:

In my view the provisions of The Railways Infrastructure (Access and Management) (Amendment) Regulations 2009 are compatible with the Convention rights.

7. Policy background

7.1 The main objective of Directive 2007/58/EC is the liberalisation of international passenger services. The Directive places a legal obligation on Member States to transpose its provisions. Therefore, there is no alternative but to implement the Directive in Great Britain by means of secondary legislation.

7.2 Directive 2007/58/EC extends the existing right of access to provide international passenger service in the EC, currently available to 'international groupings' (i.e. any association of railway undertakings based in more than one Member State), to any licensed railway undertaking; and adds the right of cabotage (i.e. to pick up and set down passengers at stations within the same Member State as part of an international train service). The Directive allows Member States to restrict competition in particular markets which are the subject of a public service contract (i.e. a contract to provide non-commercial services in return for compensation by a State authority), where this is strictly necessary to maintain the economic equilibrium of the public service contract and has been approved by that State's regulatory body which oversees infrastructure capacity allocation and charging. The Directive also provides revised requirements for framework agreements for access to infrastructure.

7.3 The instrument implements all the mandatory provisions of the Directive in full. The majority of the optional provisions in the Directive allow Member States to either restrict access to infrastructure or impose levies. We will not be implementing these optional provisions with the exception of the provision allowing Member States to restrict competition in particular markets which are the subject of a public service contract where this is strictly necessary to maintain the economic equilibrium of the public service and has been approved by that State's regulatory body which oversees infrastructure capacity allocation and charging.

7.4 Separate secondary legislation by means of regulations amending the Channel Tunnel (International Arrangements) Order 2005 (SI 2005/3207) will implement the Directive in relation to the Channel Tunnel.

7.5 There is currently only one international passenger train operator in Great Britain, Eurostar, which this legislation may affect.

7.6 This instrument also takes the opportunity to correct three transposition errors in the 2005 Regulations, which relate to access charging. The consultation highlighted a transposition error in Schedule 3, paragraph 3(2)(a) of SI 2005/3049, where the English text of Article 8(2) of Directive 2001/14/EC differs from that of the French and German texts. Article 8(2) of that Directive states "... the infrastructure manager may set or continue to set higher charges on the basis of the long-term costs of such projects if they increase efficiency and/or cost-effectiveness and could not otherwise be or have been undertaken". In the English version of that Directive, "they" could refer to either "higher charges" or "projects". Paragraph 3(2)(a) of Schedule 3 to SI 2005/3049 refers to "higher charges". However, we now consider that the provision should refer to "projects" and the 2005 Regulations are amended accordingly.

7.7 During the consultation, two further transposition errors were drawn to our attention. Paragraph 6(1) of Schedule 3 to the 2005 Regulations has the opposite effect to that required by Directive 2001/14/EC (Article 9(1)) by preventing infrastructure managers from reducing access charges to a level below the costs incurred as a result of operating the train service. Paragraph 6(3) of Schedule 3 to the 2005 Regulations currently provides that discounts must be "time limited", where Directive 2001/14/EC (Article 9(3)) provides that discounts should only be time limited in certain circumstances. The 2005 Regulations are amended accordingly. All three errors are corrected by regulation 2(15).

7.8 To fulfil the Government undertaking to Parliament that the regulatory regime in relation to the High Speed 1 railway would be made closer to the extant regime in relation to the rest of the National rail network, this instrument will amend the 2005 Regulations to transfer from the Secretary of State to the ORR responsibility for:

- ensuring that the requirement to provide a rail link facility infrastructure manager with incentives to reduce the costs of provision of infrastructure and the level of access charges are complied with;
- ensuring that charges for the use of rail link facility railway infrastructure imposed by the infrastructure manager comply with the requirements of the Regulations; and
- supervising negotiations between an applicant and the infrastructure manager concerning the level of rail link facility infrastructure charges and for intervening should such negotiations be likely to contravene the requirements of the Regulations.

7.9 It is proposed that the Secretary of State will enter into a new concession agreement with HS1 Ltd, the infrastructure manager of High Speed

1. The concession agreement, which will be the relevant development agreement for the purposes of the 2005 Regulations, will among other things provide for an ORR periodic review process analogous to that which occurs on the rest of the National network. Relevant details will be published on the Department for Transport's website when the Secretary of State and HS1 Ltd have entered into the concession agreement.

7.10 There has been no public interest in this policy as no responses to the consultation were received from the general public. Neither has there been any media attention.

7.11 Apart from the fact that the Regulations implement a Directive, the changes implemented by the Regulations are not in themselves politically or legally important.

7.12 This instrument makes the first amendment to The Railways Infrastructure (Access and Management) Regulations 2005 (SI 2005/3049). We do not propose consolidating the legislation at this time.

8. Consultation outcome

8.1 The Department carried out a twelve-week consultation exercise on the draft Regulations via the Department's website. Thirty stakeholders were specifically targeted. Eleven responses were received (including all of the key rail industry stakeholders). An analysis of the responses was completed and consultees' views taken into consideration as summarised below.

8.2 The majority of respondents thought that the ORR should be able to act on its own initiative to determine the principal purpose of a service, and to determine whether the economic equilibrium of a public service contract would be compromised. The Department considers that the ORR is able to act on its own initiative, as it comes within the category of parties listed in Article 1(8) paragraph 3b of the Directive, i.e. "any other interested competent authority with the right to limit access under this Article". Additionally, giving the ORR the authority to act on its own initiative will ensure that assessments are undertaken without delay. Therefore, the Regulations have been amended to give the ORR the authority to act under its own initiative in these circumstances.

8.3 The majority of respondents thought it would be desirable for there to be a statutory requirement for the ORR to pre-approve framework agreements between the infrastructure manager and railway undertakings on the High Speed 1 network. Consequently, a requirement has been included in the Regulations requiring such prior approval.

8.4 One respondent noted that a provision allowing Infrastructure Managers to reduce capacity under the framework agreement in certain circumstances had not been included in the Regulations. Regulation 2(7) now includes provision to that effect.

8.5 The consultation identified two errors in the 2005 Regulations that relate to two provisions on discounts to access charging which are currently too restrictive. The Regulations will now correct both errors.

8.6 Several respondents commented on the definition of “relevant public service contract” in draft regulation 2(2)(f) and sought confirmation that the definition included both franchise and concession agreements. The definition does in principle include both types of contracts, although it will be a question of fact whether any particular contract is covered by the definition in practice. Consequently, the Regulations have not been amended but additional guidance on the point will be published on our website.

8.7 A copy of the consultation report is available on the Department's website at www.dft.gov.uk.

9. Guidance

9.1 Guidance on the Regulations as they apply to international passenger services will be published on the Department's website, and will be incorporated into the Department's current web based guidance on The Railways Infrastructure (Access and Management) Regulations 2005.

10. Impact

10.1 The instrument will have some impact on the infrastructure manager of the High Speed 1 railway, HS1 Ltd, and on train operators including Eurostar and London & South Eastern Railway Limited. There is no impact on charities or voluntary bodies.

10.2 The ORR is the main public body affected, as the Regulations place a number of new duties on the regulatory body, including those to be transferred from the Secretary of State in relation to rail link facilities. In most cases similar functions are already carried out by the ORR, and it is assumed that any extra work created by the implementation of Directive 2007/58/EC by these Regulations will be accommodated by existing resources. The ORR will need additional resources to undertake its new responsibilities in relation to rail link facilities, but it will be able to recover the associated costs through fees levied on HS1 Ltd.

10.3 An Impact Assessment for the transposition of Directive 2007/58/EC is attached to this memorandum at Annex B, and an Impact Assessment for the transfer of regulatory responsibilities from the Secretary of State to the ORR in respect of rail link facilities is attached to this memorandum at Annex C.

11. Regulating small business

11.1 The legislation applies to small business. However, in practice the legislation will only affect large rail operators and no impact on small firms is expected.

12. Monitoring & review

12.1 The purpose of this instrument is to open up market access for international passenger services. This instrument may attract new applications from operators to run other international passenger services. Greater competition in this area could result in an increase to service levels and more choice for passengers.

12.2 The European Commission will submit a report to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions by 31 December 2012 evaluating the application of Directive 2007/58/EC. The report will also assess the state of preparation of a further opening up of the rail market.

13. Contact

Fran Queen at the Department for Transport, Tel: 020 7944 5020 or e-mail: fran.queen@dft.gsi.gov.uk can answer any queries regarding the instrument.

TRANSPOSITION NOTE FOR DIRECTIVE 2007/58/EC AMENDING COUNCIL DIRECTIVE 91/440/EEC ON THE DEVELOPMENT OF THE COMMUNITY'S RAILWAYS AND DIRECTIVE 2001/14/EC ON THE ALLOCATION OF RAILWAY INFRASTRUCTURE CAPACITY AND THE LEVYING OF CHARGES FOR USE OF RAILWAY INFRASTRUCTURE

These regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Articles	Objectives	Implementation	Responsibility
Article 1(1)	Member States may exclude any international transit service that starts and finishes outside of the EC.	This situation is not geographically possible in Great Britain so this provision has not been implemented.	
Article 1(2)	Deletes definition of "international grouping" in the fourth indent of Article 3 of Directive 91/440/EEC.	New Regulation 2(2)(b) deletes the reference to "an international grouping of railway undertakings" from Regulation 3 of the Railways Infrastructure (Access and Management) Regulations 2005.	Secretary of State
Article 1(3)	Inserts a definition for "international passenger service" after the fifth indent of Article 3 of Directive 91/440/EEC.	Regulation 3(2) of the Railways Infrastructure (Access and Management) Regulations 2005 provides that definitions in the Council Directives shall have the same meaning in these Regulations. New Regulation 2(2)(d) adds Directive 2007/58/EC to the definition of Council Directives.	Secretary of State
Article 1(4)	Inserts a definition for "transit " after the sixth indent of Article 3 of Directive 91/440/EEC.	Such rail "transit" is not geographically possible in Great Britain, so this provision has not been implemented.	
Article 1(5)	Deletes the first indent of Article 5(3) of Directive 91/440/EEC concerning international groupings.	Regulation 8 of the Railways Infrastructure (Access and Management) Regulations 2005, which implements Article 5(3) of Directive 91/440/EEC does	Secretary of State

Articles	Objectives	Implementation	Responsibility
		not refer to "international groupings". Therefore, no change is required.	
Article 1(6) -	Deletes the phrase "and international groupings" in Article 8(1) of Directive 91/440/EEC.	Regulation 9 of the Railways Infrastructure (Access and Management) Regulations 2005, which implements Article 8(1) of Directive 91/440/EEC does not refer to "international groupings". Therefore, no change is required.	Secretary of State
Article 1(7)	Deletes Article 10(1) of Directive 91/440/EEC concerning international groupings.	New Regulation 2(3) substitutes a new Regulation 5(1) in the Railways Infrastructure (Access and Management) Regulations 2005, removing reference to "international groupings".	Secretary of State
Article 1(8)	<p>Paragraph 3a is added to Article 10 of Directive 91/440/EEC extending the existing right of access to provide international passenger services in the EC, currently available to 'international groupings', to any licensed railway undertaking; and adding the right to pick up and set down passengers at stations within a Member State as part of an international train service from 1 January 2010.</p> <p>Allows that the right of access to the infrastructure of Member States where the share of international carriage of passengers by train constitutes more than half of the passenger turnover of railway undertakings in that Member State shall be</p>	<p>New Regulation 2(3) substitutes a new Regulation 5(1) in the Railways Infrastructure (Access and Management) Regulations 2005 extending those Regulations to international passenger services; creates a new Regulation 5(2) adding the right to pick up passengers at any station and set them down at another.</p> <p>This situation does not occur in Great Britain, so this optional provision has not been implemented.</p>	Secretary of State, Office of Rail Regulation

Articles	Objectives	Implementation	Responsibility
	<p>granted by 1 January 2012.</p> <p>The regulatory body shall determine whether the principle purpose of the service is to carry passengers between stations located in different Member States.</p> <p>Paragraph 3b is added to Article 10 of Directive 91/440/EEC allowing Member States to restrict competition in particular markets which are the subject of a public service contract, where this is strictly necessary to maintain the economic equilibrium of the public service and has been approved by that State's regulatory body which oversees infrastructure capacity allocation and charging. The regulatory body would determine whether or not economic equilibrium would be compromised.</p> <p>Paragraph 3c is added to Article 10 of Directive 91/440/EEC allowing Member States to limit the right to pick up and</p>	<p>New Regulation 2(9) inserts a new Regulation 29A in the Railways Infrastructure (Access and Management) Regulations 2005, giving the Office of Rail Regulation (ORR) responsibility for deciding whether a service is an international passenger service.</p> <p>New Regulation 2(3) substitutes a new Regulation 5 in the Railways Infrastructure (Access and Management) Regulations 2005, allowing the ORR to limit access rights if the economic equilibrium of a public service contract would be compromised. New Regulation 2(9) creating new Regulation 29A in the Railways Infrastructure (Access and Management) Regulations 2005 allows any relevant railway undertakings, any relevant competent authority, and the infrastructure manager the right to request the ORR to decide whether an applicant wishing to run an international passenger service would compromise the economic equilibrium of a relevant public service contract.</p> <p>This situation does not currently occur in Great Britain, so this optional provision has not been implemented.</p>	

Articles	Objectives	Implementation	Responsibility
	<p>set down passengers at stations within the same Member State on the route of an international passenger service where an exclusive right to convey passengers between those stations has been granted under a concession contract awarded before 4 December 2007 on the basis of a fair competitive tendering procedure and in accordance with the relevant principles of Community law. This limitation may continue for the original duration of the contract, or 15 years, whichever is the shorter.</p> <p>Paragraph 3d is added to Article 10 of Directive 91/440/EEC permits Member States <i>not</i> to grant rights of access before 1 January 2010, where access rights of a similar nature are <i>not</i> granted.</p> <p>Paragraph 3e is added to Article 10 of Directive 91/440/EEC requiring Member States to ensure that decisions referred to in paragraphs 3b, 3c and 3d are subject to judicial review.</p> <p>Paragraph 3f is added to Article 10 of Directive 91/440/EEC allowing the authorities responsible for rail passenger transport to impose a</p>	<p>We have made a policy decision not to implement this optional provision in Great Britain.</p> <p>New Regulation 2(9) inserts a new Regulation 29A(10) in the Railways Infrastructure (Access and Management) Regulations 2005, which permits any person to make an application to the Court.</p> <p>We have made a policy decision not to transpose this optional provision in Great Britain.</p>	

Articles	Objectives	Implementation	Responsibility
	levy on railway undertakings providing passenger services for the operation of routes which fall within the jurisdiction of that authority and which are operated between two stations in that Member State. Levies should be the same rates for international rail passenger transport services as for domestic routes which fall within the jurisdiction of that authority. The relevant authorities shall keep records of levies imposed and the Member States shall provide the Commission with this information.		
Article 2(1)	A new exclusion is added at Article 1(3)(e) to Directive 2001/14/EC for transport operations in the form of railway services which are carried out in transit through the Community.	This situation is not geographically possible in Great Britain, so this provision has not been implemented.	
Article 2(2)	A new definition for "transit" is added at Article 2(n) to Directive 2001/14/EC.	Such rail "transit" is not geographically possible in Great Britain, so this provision has not been implemented.	
Article 2(3)	A new paragraph is added at Article 13(4) to Directive 2001/14/EC requiring an applicant to contact the infrastructure managers and the regulatory bodies concerned, when applying to operate international passenger services. If any competent authorities have awarded a rail	New Regulation 2(6) inserts a new Regulation 16(4A) & (4B) in the Railways Infrastructure (Access and Management) Regulations 2005, requiring an applicant wishing to operate an international passenger service to inform the infrastructure manager and ORR. ORR must provide details to any relevant competent authority and any	Secretary of State, Office of Rail Regulation

Articles	Objectives	Implementation	Responsibility
	passenger service defined in a public service contract, the regulatory bodies shall ensure that any other interested competent authority with a right to limit access under Article 10(3b) of Directive 91/440/EEC and any railway undertaking performing the public service contract on the route of this international passenger service is informed.	relevant public service operator.	
Article 2(4)	<p>Article 17(5) of Directive 2001/14/EC is replaced by new Article 17(5) and 17(5a) setting the time periods for framework agreements.</p> <p>The third paragraph of new Article 17(5a) relates to international passenger services operating before 1 January 2010 without a framework agreement.</p>	<p>New Regulation 2(7) amends Regulation 18 in the Railways Infrastructure (Access and Management) Regulations 2005 on framework agreements.</p> <p>This situation does not occur in Great Britain, so this provision has not been implemented.</p>	<p>Secretary of State, Office of Rail Regulation</p>
Article 3(1)	Requires Member States to implement the Directive before 4 June 2009.	<p>This Statutory Instrument covers Great Britain only. The relevant provisions will come into force on 3 June 2009 and 1 January 2010 respectively as implemented by new Regulation 1.</p> <p>Separate legislation will be enacted for transposition in Northern Ireland.</p>	<p>Secretary of State, Northern Ireland Department for Regional Development</p>
Article 3(3)	The provisions of points 2, 5, 6 and 7 of Article 1 apply from 1 January 2010.	New Regulation 1(1)(c) implements these requirements.	Secretary of State

Summary: Intervention & Options		
Department /Agency: Transport	Title: Impact Assessment of Directive 2007/58/EC on rail passenger liberalisation	
Stage: Implementation	Version: 2	Date 23 April 2009
Related Publications:		

Available to view or download at:

<http://www.dft.gov.uk>

Contact for enquiries: Fran Queen

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

Directive 2007/58/EC addresses liberalisation of international passenger services and is one of the latest in a series of directives designed to revitalise the railways and take forward the creation of an integrated European railway area.

To comply with Directive 2007/58/EC, it is necessary to amend secondary legislation extending current legislation on international rail freight to international passenger services.

What are the policy objectives and the intended effects?

The Directive's objectives address opening the market for provision of train services, and harmonising regulation of the rail sector in order to facilitate use of rights of access and reduce the costs of providing train services.

What policy options have been considered? Please justify any preferred option.

1. Do nothing
2. Do the minimum needed to give effect to the Directive in Great Britain.
This is the preferred option as it meets our Community obligations while minimising the impact on industry.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The European Commission will review the impact of the Directive by 1 January 2009, and produce a second review on market development by 31 December 2012.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments

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 Adonis

28th April 2009

Summary: Analysis & Evidence

Policy Option: 2

Description: Do the minimum needed to give effect to the Directive in Great Britain

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost (excluding one-off)		
	£		
○	<p>Other key non-monetised costs by 'main affected groups' It is impossible to predict at this stage whether new international passenger operators will enter the market to and from the UK. Were they to do so, this could have an adverse on Eurostar's revenues. There may also be a very small increase in costs to the ORR</p>		

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yr	
	£		
	Average Annual Benefit (excluding one-off)		
	£		
○	<p>Other key non-monetised benefits by 'main affected groups' Should new international operators enter the market, there may be benefits to passengers from increased competition and greater choice. The entrance of new operators might also increase the access charge revenue of GB infrastructure managers in particular the manager of the High Speed 1 railway.</p>		

Key Assumptions/Sensitivities/Risks

Price Base	Time Period	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ Not known
What is the geographic coverage of the policy/option?			Great Britain
On what date will the policy be implemented?			3 June 2009
Which organisation(s) will enforce the policy?			ORR
What is the total annual cost of enforcement for these			£ Unknown, v small
Does enforcement comply with Hampton principles?			Yes
Will implementation go beyond minimum EU requirements?			No
What is the value of the proposed offsetting measure per year?			£ N/A

What is the value of changes in greenhouse gas emissions?		£ Unknown		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large Unknown
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase -
Increase	£	Decreases	£	Net
				£ Unknown

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

Directive 2007/58/EC extends the provisions of previous Directives in order to liberalise international passenger rail services. There is currently only one international passenger service operator in Great Britain, Eurostar, whom the directive may affect. However, the legal certainty that the Directive and its implementing Regulations will provide may attract new applications to run international passenger services to and from the UK. Greater competition in this area could result in an increase to service levels and more choice for passengers. The arrival of new entrants to the market might also provide benefits to the High Speed 1 infrastructure manager by increasing access charge revenues. Conversely, the arrival of competition could see passengers switch from existing Eurostar services and could thus have an adverse impact on that company's revenues.

The Directive may provide some additional commercial opportunities for UK operators in other Member States, particularly where the right of access for domestic traffic is currently reserved to an incumbent operator.

The Directive also amends the current requirements on the duration of framework agreements for all rail services. The cost to operators of this requirement is unknown.

The Office of Rail Regulation (ORR) is the regulatory body under the current legislation - The Railways Infrastructure (Access and Management) Regulations 2005. The new regulations will amend and extend their responsibility to cover new requirements for international rail services. This will create some additional work for ORR, but the cost implications are likely to be minimal.

Legal Aid

The Directive and its implementing Regulations are likely to have no effect on the legal aid budget, as only large rail operators would potentially make an application under the Civil Procedure Rules.

Competition assessment

The proposed legislation will not directly affect or limit the number or range of suppliers (in this case international passenger rail operators) nor limit the firm's ability or incentives to compete vigorously. If the increased legal certainty does result in more firms entering the market then competition will actually increase.

Small firms impact test

The proposed legislation will only affect large rail operators. No impact on small firms is expected.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No

Summary: Intervention & Options		
Department /Agency: Transport	Title: Impact Assessment of Transfer to the ORR of some regulatory functions in relation to rail link facilities	
Stage: Implementation	Version: 3	Date 27 April 2009
Related Publications:		

Available to view or download at:

<http://www.dft.gov.uk>

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

The Railways Infrastructure (Access and Management) regulations 2005 provide for a special regulatory regime in relation to rail link facilities. Whereas, regulatory responsibilities in relation to the rest of the National rail network generally reside with the Office of Rail Regulation (ORR), the 2005 Regulations provide for regulatory responsibilities in relation to rail link facilities generally to reside with the Secretary of State. The continuation of the two different regulatory regimes is no longer considered tenable in its entirety.

What are the policy objectives and the intended effects?

The Government has concluded that the regulatory regime in relation to rail link facilities should be made closer to the extant regime in relation to the rest of the National rail network.

What policy options have been considered? Please justify any preferred option.

1. Do nothing
2. Transfer all current regulatory responsibilities from the Secretary of State to ORR; and
3. Transfer a subset of the current regulatory responsibilities from the Secretary of State to ORR.

The preferred option is No. 3. The preferred option will fulfil the undertaking given to Parliament to make the regulation of High Speed 1 closer to the existing national network regime. Option 2 was rejected because the Secretary of State wishes to retain certain regulatory functions which will have a direct bearing on the value of the proposed concession to operate the railway.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Discussions with ORR about the transfer of functions are ongoing. The actual costs associated with ORR undertaking the new functions will be established when those discussions are complete.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments

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 Adonis

28th April 2009

Summary: Analysis & Evidence

Policy Option: 3

Description: Transfer a subset of the current regulatory responsibilities from the Secretary of State to ORR.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The transfer of functions will increase the costs of the HS1 infrastructure manager as it will have to pay fees to cover the ORR's costs (but see "Evidence Base" below). The actual increase will not be known until the role of the ORR has been finalised. But, initial estimates are that costs might be about £0.5m pa
	One-off (Transition)	Yrs	
	£ 0		
	Average Annual Cost (excluding one-off)		
	£ 0.5m		
○	Other key non-monetised costs by 'main affected groups'		

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yr	
	£		
	Average Annual Benefit (excluding one-off)		
	£		
○	Other key non-monetised benefits by 'main affected groups' The transfer of regulatory functions will benefit existing users of HS1 because the railway industry has a very good understanding of the way in which the ORR carries out its functions in relation to the National network. However, it is not possible to monetise such benefits.		

Key Assumptions/Sensitivities/Risks

Price Base	Time Period	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ Not known
What is the geographic coverage of the policy/option?			Great Britain
On what date will the policy be implemented?			1 October 2009
Which organisation(s) will enforce the policy?			ORR
What is the total annual cost of enforcement for these			£ 0.5m (estimate)
Does enforcement comply with Hampton principles?			Yes
Will implementation go beyond minimum EU requirements?			No
What is the value of the proposed offsetting measure per year?			£ N/A
What is the value of changes in greenhouse gas emissions?			£ N/A

Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase -
Increase	£	Decreases	£	Net
				£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

The Railways Infrastructure (Access and Management) Regulations 2005 provide for a special regulatory regime in relation to rail link facilities such as the High Speed 1 railway between London St Pancras Station and the Channel Tunnel. Whereas, regulatory responsibilities in relation to the rest of the National rail network generally reside with the ORR, the 2005 Regulations provide for regulatory responsibilities in relation to rail link facilities generally to reside with the Secretary of State.

During the passage through Parliament of the Channel Tunnel Rail Link (Supplementary Provisions) Act 2008, the Government undertook to make the regulatory regime in relation to the High Speed 1 railway between London St Pancras Station and the Channel Tunnel closer to the extant regime in relation to the rest of the National rail network.

Subsequently, the Government has carefully considered which of the Secretary of State's responsibilities under the Railways Infrastructure (Access and Management) Regulations 2005 should be transferred to the ORR. And the Department for Transport has held discussions with the ORR and with the HS1 infrastructure manager, which would bear the costs of the ORR's new functions in relation to the railway.

The Government has now concluded that, in relation to rail link facilities such as High Speed 1, it is appropriate for the ORR to be responsible for: ensuring that the requirements to provide the infrastructure manager with incentives to reduce costs of provision of infrastructure and the level of access charges are implemented; ensuring that charges for the use of the infrastructure comply with the requirements of the Regulations; and supervising negotiations between the infrastructure manager and those seeking access to the railway about the level of infrastructure charges. But the Government has also concluded that the Secretary of State should retain responsibility for regulatory matters which may directly impact on the ability of the Government to maximise the recovery of its investment in rail link facilities.

In the light of responses to the consultation on the draft Statutory Instrument, the Government has also concluded that framework agreements in relation to services on the High Speed 1 railway should require the pre-approval of the ORR.

The proposed changes to the way in which rail link facilities are regulated will benefit existing and potential users of HS1 and any other rail link facility. The railway industry has no real experience of the Secretary of State carrying out railway regulatory functions and this creates a degree of uncertainty for the industry. Conversely, it has a very good understanding of the way in which the ORR carries out its regulatory functions.

The proposals will reduce the costs of the Secretary of State because he will no longer have to carry out the transferred functions. The proposals will add to the costs of the High Speed 1 infrastructure manager because the Office of Rail Regulation will levy fees to cover the costs of its new regulatory role. However, the infrastructure manager would be able to recover these costs

from train operators through access charges. Ultimately, most of the costs are likely to fall to train passengers through ticket prices but, shared across the tens of thousands of services on the line each year, the impact will be very small.

Legal Aid

The proposed transfer of regulatory responsibility is likely to have no effect on the legal aid budget.

Competition assessment

The proposed legislation will not limit the number of operators nor limit anybody's ability or incentives to compete vigorously.

Small firms impact test

The proposed legislation will only affect large rail operators. No impact on small firms is expected.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No