

The Railways (Interoperability) Regulations 2011

Department for Transport

RPC rating: fit for purpose

Description of measure

The original measure transposed EU requirements introducing a regulatory framework for the technical harmonisation of rail operating standards and for common approval processes in member states. The 2011 regulations amended existing domestic interoperability regulations. The post-implementation review (PIR), however, considers all of the effects of the regulations dating back to 2006, not just the amended sections. While this appears to have been done because of the requirements of the statutory review clause, the RPC welcomes the approach to providing a more holistic review of the regulatory burdens associated with the interoperability requirements.

The regulations introduced new requirements that apply when building new rail infrastructure or rolling stock, or when carrying out upgrade or renewal work. These include seeking authorisation from the relevant national safety authority and employing a third party to ensure compliance with relevant technical specifications for interoperability (TSI). The regulations were also intended to introduce more streamlined approval processes.

The Department has undertaken a light touch PIR on the basis that a more extensive stakeholder and engagement exercise is to take place between 2017 and 2018 to inform the transposition of the recast 2016 EU directive. The Department expects to make changes to the regulations and requirements as part of the transposition.

Impacts of the measure

The original impact assessment (IA) estimated that the 2011 amendments would have a total net benefit of £75 million over the ten year appraisal period, including an average annual £2.1 million direct benefit¹ (in equivalent annual net direct cost to business (EANDCB) terms). As the proposal was of EU origin these benefits did not score toward the government's one-in, two-out account.

The PIR, and the original IA, both explain that a significant proportion of the benefits were expected to accrue later in the ten year appraisal period, a position reflected in stakeholder responses to the PIR evidence gathering. The PIR states that this effect is likely to be most significant in relation to the development of a register of

¹ Validated by the RPC – opinion reference – RPC11-DfT-1095(2)

infrastructure (which was intended to reduce subsequent assessment and compliance checking costs). Although it will take time for the register to become fully populated and for the benefits to be realised, the costs of providing the relevant information have been more frontloaded. The development of the register was expected to have gross costs to business of £35 million over the ten year period, and deliver £65 million gross benefits.

The changes introduced in relation to streamlining vehicle authorisations, for example in relation to enabling “type authorisations” to be made against TSIs, have also failed to deliver significant proportions of the estimated £20 million benefits (in NPV terms). Stakeholder responses argue that changes to TSIs invalidate previous “type authorisations”, significantly reducing any benefits associated with the lighter touch requirements.

Quality of submission

Although a light-touch approach would normally not be proportionate to a measure of this scale, this PIR provides a level of information and detail sufficient to support the Department’s recommendation that the regulations are amended at the next possible opportunity. The evidence suggests that there are a number of areas in which the regulations could readily be improved in order to remove unnecessary burdens on business. However, as the regulations are of EU origin and the UK is required to transpose the 2016 recast Directive by 2019, the PIR does not include options for these changes to be implemented at this stage, but commits to exploring options and implementing new approaches in line with the transposition of the recast directive and the future regulatory relationship with the EU. The PIR should, however, include a discussion of whether changes or improvements could be made in advance that would be consistent with the current EU requirements, for example in relation to the enforcement of the regulations.

The PIR identifies a number of concerns and issues in relation to the regulations. In particular, it highlights that the regulations have failed to achieve their overarching objective of reducing the cost of railways through the introduction of common technical standards and approval processes. The PIR highlights characteristics of the UK railway system, such as different gauge tracks, that significantly limit the potential benefits of common standards, while businesses are still required to conform with the additional approval processes and specifications even where there is no intention for vehicles to be used outside the UK. Considering the amount of comment generated in response to the PIR it is not clear why these issues and concerns were not discussed and appraised further in the original IA, especially given the clear differences between the UK railways and mainland European railways in terms of cross border services.

As a result of the additional requirements imposed, smaller freight companies have experienced increased costs, without relevant offsetting benefits. While some responses to the PIR suggest that this might be due to the time it will take for the benefits of the requirements to materialise, the Department's conclusion is that the regulations do not provide sufficient flexibility to reflect adequately the UK circumstances and how these differ from the rest of Europe.

The PIR also concludes that the implementation of the requirements by other Member States has enabled businesses to remain non-compliant with relevant TSIs, enabling them to effectively operate at a lower cost, for example enabling the use of older designs.

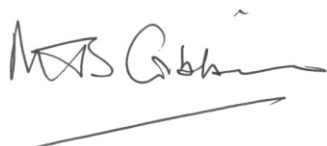
The RPC welcomes the strength and clarity of the findings of the review, especially given the light-touch approach taken to evidence gathering. The PIR illustrates that a light-touch PIR does not need to result in a lack of clear findings or recommendations.

To improve the PIR, the Department should consider whether there are any lessons to be learned regarding the identification of unintended impacts and risks in the appraisal of new policies.

Departmental recommendation	Amend
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RPC assessment

Is the evidence in the PIR sufficiently robust to support the departmental recommendation?	Yes
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Michael Gibbons CBE, Chairman