

Rail Delivery Group



Title	Updating Rail Markets Regulations: Implementing Part of the Market Pillar of the Fourth Railway Package
Paper type	Consultation Response
Summary	A response to the Government's consultation on the implementation of the Fourth Railway Package Market Pillar and Statutory Instruments required for Brexit.
Version	V1.0
Version comments	For submission
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Updating Rail Markets Regulations: Implementing Part of the Market Pillar of the Fourth Railway Package

1 Introduction

1.1 About RDG

The Rail Delivery Group (RDG) brings together passenger train operators, freight train operators, as well as Network Rail; and together with the rail supply industry, the rail industry – a partnership of the public and private sectors - is working with a plan [In Partnership for Britain's Prosperity](#) to change, improve and secure prosperity in Great Britain GB now and in the future. The RDG provides services to enable its members to succeed in transforming and delivering a successful railway to the benefit of customers, the taxpayer and the UK's economy. In addition, the RDG provides support and gives a voice to passenger and freight operators, as well as delivering important national ticketing, information and reservation services for passengers and staff.

RDG welcomes the opportunity to input to this consultation process and the work DfT has undertaken with the whole industry to provide context and information.

2 Part 1: Implementing the Market Pillar Directive

2.1 Background

RDG believes in an open and competitive rail sector where the independent infrastructure manager (IM) is able to operate and develop the network in the interests of all its railway undertaking (RU) customers and, ultimately, passengers and freight users. As such, RDG supported the Fourth Railway Package as it progressed through the European legislative process and successfully secured amendments where the text was potentially problematic to mature liberalised markets.

Notwithstanding the outcome of Brexit negotiations, RDG believes the Fourth Railway Package opens opportunities for British operators wishing to operate in other EU markets. RDG's members already operate public service contracts in Germany and other EU markets and are seeking to enter a number of the newly liberalising markets across the EU. If EU member states adequately implement the Fourth Railway Package there will be more opportunities for British operators to export their expertise.

In summary, the measures contained in all aspects of the Fourth Railway Package, not just Directive 2016/2370 present potential opportunities for RDG's members. In addition, due to the fact that GB rail spearheaded liberalisation in the early 1990s, the new measures require relatively little action by the Government to implement.

Legislating at an EU level for markets at very different stages of maturity with regards to liberalisation is very challenging and will sometimes mean that transposition is treated differently in different Member States. RDG members would like to note that the recommendations it makes in response to this consultation pertain only to the specificities of transposing the directive in the UK (excluding Northern Ireland) and not in relation to the introduction of the directive into other Member States.

2.2 Consultation questions

Are you considered to be a small or micro business according to the Better Regulation Framework Manual?

No

We have assessed the approach of not using copy out as being the least burdensome and the least costly to businesses. Do you agree with this assessment? If you do not agree with this assessment, please provide evidence on the likely benefits of using a copy out approach to transpose the Directive.

Ordinarily RDG would support the Government policy of a “copy out”. However, in this instance, and with The Railways (Access and Management and Licensing of Railways Undertakings) Regulations only being modified in 2016 to transpose Directive 2012/34/EU, it is logical that a strict “copy out” is not used and the contents of 2016/2370 are instead woven into these measures. Nonetheless it is critical that any interpretation used when not applying strict “copy out” does not result in gold-plating of legislation, the introduction of new policy ideas or create legal ambiguity which could import cost and risk to the industry.

RDG operator members believe that the transposition, in general, should encapsulate the spirit and intent of the Fourth Railway Package as a whole most notably these around impartiality, non-discrimination and competition. The risk with not using ‘copy out’ is that this intent is not as clear, even unintentionally. Making a clear reference to the recitals in 2016/2370 will also help give some idea of context and intent.

RDG operator members would also like it to be noted that transposition should be consistent with current Government policy, and not seek to pre-empt any future decisions on rail policy. RDG firmly believes that any changes made as a result of this consultation should be limited solely to the transposition of Directive 2016/2370 into The Railways (Access and Management and Licensing of Railways Undertakings) Regulations.

2.3 Theme 1

Do you agree with our initial assessment that the introducing the new requirements in Theme 1 will have zero impact? If you disagree please give further details including the potential cost to you of implementing the requirements.

RDG does not entirely agree with the DfT’s assessment that new Articles 7, 7a, 7b and 7c will have zero impact on the rail industry. Although the majority of provisions are already established practices in the rail industry in GB, some issues will need to be considered.

As these articles passed through the European legislative process, RDG made representations to the European Commission and European Parliament regarding the importance of retaining the ability for collaboration in a vertically separated industry. The European Commission’s original proposals were drafted to push reluctant markets to liberalise, whilst sometimes having unintended consequences on more mature liberalised markets. Whilst the proposals were initially felt to work alongside the British system, RDG operator members believe that developments at Network Rail and in the franchising market have changed this position to some extent.

Due to the nuanced nature of the changes in Article 7 and the difficulty in transposition, RDG would like to see the proposed text from the DfT prior to final adoption.

Article 7 Independence of the infrastructure manager

‘Alliancing’ is a key pillar of improving the operational railway. Alliances are agreements with train operating companies that align behaviours through shared incentives and objectives. Different forms of alliance arrangement will be appropriate for different parts of the railway and we are working with operators and governments on these opportunities.

Alliance Agreements

During the drafting of the Fourth Railway Package, the industry worked closely with legislators to ensure that the text was consistent with the then current policy on alliances. Alliances are set up to preserve each party's ultimate accountabilities and respect the independence of decision making on essential functions and protect parties from conflicts. As such RDG believes that in general terms alliances and their agreements are consistent with 2016/2370.

Alliance agreements are worded in line with current EU legislation. Part 7 on the 'separated activities of system operator' will need to be updated to reflect not only the 2012/34/EU revisions, but also the transposition of 2016/2370. Other mentions of compliance with EU law in the agreements should be updated. This should be at minimal costs to parties.

RDG does not believe that this will affect the transposition of the text, and therefore it can be amended to remain consistent with EU2016/2370.

Alliance Boards

Alliances have changed in some respects since the agreement of the 2016/2370 text, particularly with the evolution of the deeper alliances. As such, RDG would like to seek further clarity from the DfT on alliance boards to ensure that arrangements are consistent with the spirit of the Fourth Railway Package.

Article 7(3) outlines the requirements for the separation of the IM and RU:

3. Member States shall ensure that the same individuals cannot be concurrently appointed or employed:

(a) as members of the management board of an infrastructure manager and as members of the management board of a railway undertaking;

(b) as persons in charge of taking decisions on the essential functions and as members of the management board of a railway undertaking;

(c) where a supervisory board exists, as members of the supervisory board of an infrastructure manager and as members of the supervisory board of a railway undertaking;

(d) as members of the supervisory board of an undertaking which is part of a vertically integrated undertaking and which exercises control over both a railway undertaking and an infrastructure manager and as members of the management board of that infrastructure manager.

An alliance board itself does not appear to pose any conflict with the article as a forum. The coming together of parties at the level of an alliance does not create a circumstance where a person is required to be on the management (Executive Committee) and/or supervisory (Board) boards of both of the partners in an alliance; no such requirement is in the framework alliance agreement. However, formalistic reading of the directive could mean an alliance board is considered to be the management board of the operator if it reports directly into the Board of the owning group.

Therefore, if the alliance board is considered to be a management board, with its associated powers, and an operator representative sits on both the alliance board and the IM's management board (Executive Committee) this would be prohibited after transposition. If the alliance board did not fall foul of this classification as a management board – and there is effectively a management board at operator

level above the alliance board - the alliance parties would not be able to send their representatives to both of the meetings above the alliance board in the governance structure.

RDG members would not like to see such issues resolved by creating additional text in the transposition. Instead these should be addressed via guidance or changes through implementation. If the DfT seek further changes, then this should be subject to a separate consultation process.

Article 7c Outsourcing and sharing the infrastructure manager's functions

RDG and its members have identified two instances where there could be a potential conflict with current GB rail operations and policy and compliance with Article 7c and outsourcing to RUs. The issues arise because Article 7c may have an unintended reach and because the franchising market has changed since agreement of the text. Article 7c is drafted as follows:

“Provided that no conflicts of interest arise and that the confidentiality of commercially sensitive information is guaranteed, the infrastructure manager may:

(a) outsource functions to a different entity, provided the latter is not a railway undertaking, does not control a railway undertaking, or is not controlled by a railway undertaking. Within a vertically integrated undertaking, essential functions shall not be outsourced to any other entity of the vertically integrated undertaking, unless such entity exclusively performs essential functions;

(b) outsource the execution of works and related tasks on development, maintenance and renewal of the railway infrastructure to railway undertakings or companies which control the railway undertaking or are controlled by the railway undertaking.”

Reach of Article 7c

Not all of the functions of an Infrastructure Manager are defined within the legal text, however, the European Commission via PRIME gives six functions:

1. Planning and development to create new capacity
2. Production and allocation of capacity
3. Pricing and marketing of train paths
4. Traffic management and control
5. Network maintenance
6. Network modernisation

Of these, Directive 2016/2370 defines the “essential functions” as follows:

“essential functions” of infrastructure management means decision-making concerning train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths, and decision-making concerning infrastructure charging, including determination and collection of charges, in accordance with the charging framework and the capacity allocation framework established by the Member States pursuant to Articles 29 and 39.

These would include functions two, three and four above. Furthermore, according to article 7c(b) the only functions which may be outsourced to a Railway Undertaking (passenger and freight operators) are five and six. As such, RDG believes that Article 7c may have a wider reach than intended to achieve the objectives of the Fourth Railway Package.

For example, if an operator performs a task, such as signalling or shunting a train from its own depot or terminal onto Network Rail's infrastructure, this could fall foul of the rules. It is certain this is not the intention of the text. RDG will work with DfT to understand the extent to these types of issues.

There are two possible approaches to address the "law of unintended consequences", either through the insertion of a materiality clause, or for these examples to be excluded through inclusion of a guidance note. RDG recommends – as it avoids the need for interpretation - to include this as an example in a guidance note.

The changing franchise marketplace

Competition for the market achieves value for money for the taxpayer but will also drive efficient delivery and enhanced customer service. This competition relies on having enough bidders in the market to generate competition and derive benefits therefrom. The following companies currently have rail franchising PQQ passports:

- Abellio Transport Group
- Amey Rail
- Arriva UK Trains
- East Japan Railway Company and Mitsui & Company (Consortium)
- First Rail Holdings
- Go-Ahead Holding
- Govia
- Keolis (UK)
- Metrolinerail
- MTR Corporation (UK)
- National Express Trains
- SNCF C3
- Stagecoach Group
- Trenitalia
- Virgin Holdings

A recent development in the industry is seeing large companies which provide, engineering and operational services to the infrastructure manager and also seek to enter the franchising market. However, under the proposed measures in Directive 2016/2370 the activities companies in the list above could undertake for an infrastructure manager would be limited to those that involve the development, maintenance and renewal of railway infrastructure. If these companies undertook wider functions for the infrastructure manager including, for example planning, they would be precluded from the franchising market. The reduction of the number of companies with a passport due to Article 7c(1)(a) could be seen to have a negative impact on the franchising market.

It is important that the text does not inadvertently restrict competition in the market. Furthermore, RDG does not believe it was the intention of the Fourth Railway Package to preclude such companies from the rail operations market, particularly where there is strong vertical separation. Nonetheless, RDG would welcome clarity from the DfT and advice in an accompanying Guidance Note to the new regulations.

2.4 Theme 2

Do you agree with our initial assessment that the introducing the new requirements in Theme 2 will have a negligible impact? If you disagree please give further details including the potential impacts of implementing the requirements.

RDG agrees with the assessment of DfT that there will be little to no impact of the implementation of measures in Article 7d.

2.5 Theme 3

Do you agree with our initial assessment that introducing the new requirements in Theme 3 will have negligible impact? If you disagree please give further details including the potential cost to you of implementing the requirements.

RDG agrees with the assessment of DfT that there will be little to no impact of the implementation of measures in Article 7e, 7f and 57.

Article 7e Coordination mechanisms

In early iterations of the Fourth Railway Package, the European Commission detailed plans for a coordination committee. This was later modified to be coordination mechanisms. The industry already undertakes the coordination activities, either via committees of the RDG, RSSB or via Network Rail coordination mechanisms. We do not, therefore, believe there is any impact on implementing this measure.

The second paragraph of 7e states that the IM shall draw up and publish guidelines for coordination. Whilst the industry should fulfil the obligation of publishing where these coordination activities are taking place, it is worth noting that it is not always Network Rail who is the owner. RDG suggests DfT provide some guidance as to how this requirement is met without creating additional bureaucratic burden.

Article 7f European Network of Infrastructure Managers

Network Rail currently is an active member of the Platform of Rail Infrastructure Managers in Europe (PRIME), the forerunner of the formal network of rail infrastructure managers proposed in Article 7f. As this is already in place no additional changes are required. It should be noted that once the UK leaves the EU, Network Rail will no longer be able to be a member of PRIME and therefore this will become an 'inoperability' in need of amendment via the appropriate Withdrawal Bill statutory instrument.

2.6 Theme 4

Do you agree with our initial assessment that introducing the new requirements in Theme 4 will have a negligible impact on regulatory bodies? If you disagree please give further details including the potential impacts of implementing the requirements.

RDG agrees with the DfT statement that the provisions in Article 56 of the Directive have a negligible impact on the ORR.

2.7 Theme 5

What is the impact, if any, on the regulator of providing further information to intended passenger services providers on ensuring the economic equilibrium of a franchise operator is not compromised?

RDG has been actively participating in the European Commission's consultation on the proposed implementing act associated with Articles 10, 11 and 11a of Directive 2016/2370. We have been broadly supportive of these measures and suggested minor amendments to the detailed text to ensure drafting clarity.

Although Britain is used to having a test on open access services the economic equilibrium test (EET) will be different to the non-primarily abstractive test (NPAT). There is some concern in our membership as to how this difference will be managed and how to avoid a lengthy process with potentially conflicting results. As such only one test should be used and given the primacy of provisions and a slight preference from our membership, we recommend that this is the EET. RDG asks the DfT to clarify which test will be used as a priority, Further clarity will be needed; considering the timeframes when applying for access, certainty is key for operators and investors.

During drafting of the Fourth Railway Package we were not able to gain clarity from the European Commission on the purpose of Article 11a and why high-speed services had separate measures applied to them. The Commission had promised an explanatory note which did not materialise. As a result, the draft implementing act on the EET also includes a distinction between conventional and high-speed services. We are currently requesting the removal of this unnecessary distinction.

Finally, although RDG members have no objection to the regulator providing further information to intended passenger services so long as this remains commercially confidential where appropriate.

2.8 Theme 6

Do you agree that we should extend the exclusions from the independence, financial transparency and outsourcing requirements to the services described above?

2016/2370 proposes an amendment to the introduction of Article 2(3) but not the subsequent substantive clauses (a), (b), (c), and (d). As such we do not see that Clause 4(3) of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 requires review.

What is the impact, including costs or benefits, of extending the exclusion?

RDG members are not covered by this exemption and therefore we are not able to provide an analysis of the costs of lifting this exemption.

Do you agree that we should exclude the above services (A2 (3a)) from the requirements in the Directive?

As an open, liberalised market, RDG does not see any benefit from introducing the exemptions proposed as part of Article 2(3a). RDG cannot identify any situations where these exemptions may be useful, and there is a risk that their application without a defined purpose in mind may open a broader policy discussion which would require more detailed consultation. RDG would like to have more information as to the purpose of introducing these exemptions and where they may be useful from a policy perspective.

During the passage of the Fourth Railway Package through the legislative process RDG advised against the inclusion of these exemptions in the final text. This is because RDG believes they may be used in some Member States to prevent the full opening of markets as many of the terms in the exclusions are open to interpretation.

Therefore, RDG does not support the exemptions proposed as part of Article 2(3a).

Do you think you would take advantage of the exclusions and if so what would be the benefits to you of doing so?

See response above.

2.9 Theme 7

Do you agree that we should not implement the new requirements detailed in Theme 7?

RDG agrees with the DfT that Article 13a(1) is not required due to the principles of common and integrated ticketing already being applicable in Great Britain. However, RDG notes that the requirements in Article 13a(3) are not qualified by the “may” in Article 13a(1) and therefore must be transposed without any exemption. The DfT consultation implies that 13a(3) is optional, however we do not believe this is the case as the final wording of 2016/2370 is poor.

That said, RDG does not envisage any issues implementing Article 13a(3) as the infrastructure manager and railway undertakings in Great Britain have Service Disruption Plans in place and requirements under the National Rail Conditions of Carriage to provide assistance to passengers. These are also compliant with the cross-referenced Article 18 of 1371/2007.

If you disagree, what are the benefits of introducing the requirements in the Directive?

Not applicable.

2.10 Final comments

Are there any areas which we have not covered where you believe there will be either positive or negative impacts? If so, please give further detail.

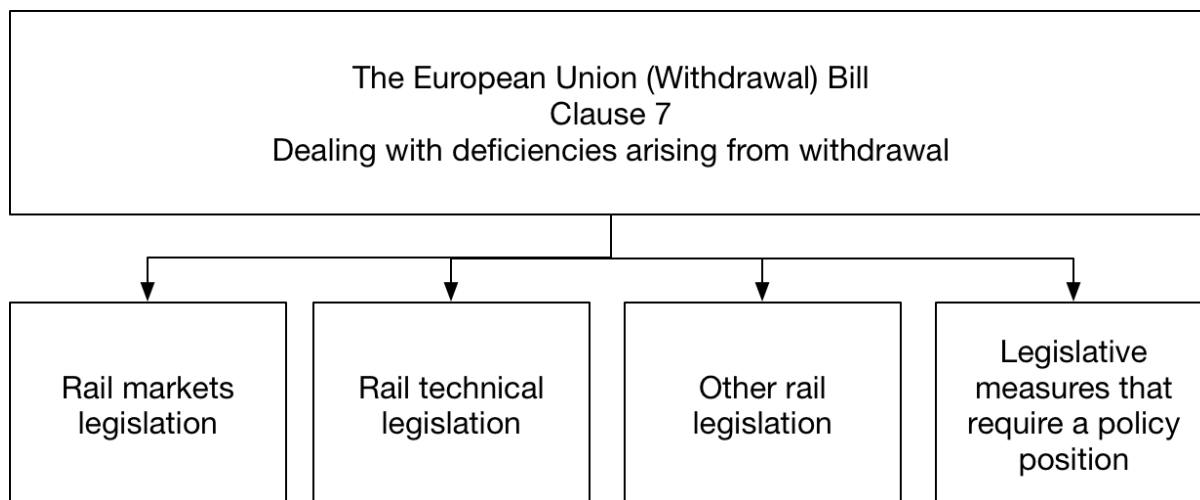
RDG has commented as far as is possible without seeing the details of the final text. As such we would welcome an opportunity to comment on the legal text as it is transposed particularly as the approach taken will not be a direct copy-out.

3 Part 2: Preparing to leave the European Union

3.1 General observations

We thank the DfT for the opportunity to comment on the proposed Statutory Instruments introduced to fix ‘legal inoperabilities’ associated with the European Union (Withdrawal) Bill (The Withdrawal Bill). We also thank DfT for including the RDG in its wider industry consultation to discuss these issues. However, in order to provide an informed and comprehensive response - it would be necessary for a strategic picture and more detailed proposals to be provided.

Using the proposed Clause 7 of the Withdrawal Bill, DfT highlights 12 legislative measures that will be ‘fixed’ as they are brought into direct domestic statute. However, RDG believes this is just a small part of the bigger picture, and greater clarity around the strategy would make it easier for us to comment. We have highlighted four categories of vertical rail legislation that must be ‘fixed’ or considered and we would like to see these included in this consultation.



‘Rail markets legislation’ covers the items highlighted in Table 1 of the consultation. ‘Rail technical legislation’ pertains to items regarding standardisation and operational matters. ‘Other rail legislation’ includes items not covered in the Table 1 of the consultation but that will require work. Finally, there are ‘legislative measures that require a policy position’. These are items where it may not be possible to bring regulations onto the domestic statute book without creating nonsensical legislation pertaining almost exclusively to European frameworks, but where a Government policy on future engagement in this area would be helpful.

RDG has categorised the legislation we think is applicable in each of these four areas:

Type	Number	Title	Summary
Rail Markets Legislative Framework (highlighted in this consultation)			
IA	Commission Implementing Regulation (EU) 2015/171	On certain aspects of the procedure of licensing railway undertakings	The regulation introduces a standard format for the licence document, changes in the scope of requirements concerning financial fitness, third-party insurance and the method of notification of the licence document.
IA	Commission Implementing Regulation (EU) 2017/2177	On access to service facilities and rail related services	The regulation introduces measures to ensure fair and equitable access to stations, depots and other rail related services.
R	(EC) 1370/2007	On public passenger transport services by rail and by road	Sets the frame for the award of compensation and/or exclusive rights for the discharge of public service obligations in the field of public passenger transport services by rail and by road. This is shortly due to be amended by 2016/2338.
IA	Implementing Regulation (EU) 2015/909	On the modalities for the calculation of the cost that is directly incurred	Modalities to calculate direct costs provides details on how infrastructure managers should calculate their direct costs.

Type	Number	Title	Summary
		as a result of operating the train service	
IA	Implementing Regulation (EU) 2016/545	On procedures and criteria concerning framework agreements for the allocation of rail infrastructure capacity	Sets out procedures and criteria concerning framework agreements for the allocation of rail infrastructure capacity.
IA	Implementing regulation (EU) 2018/XXXX	On the Economic Equilibrium Test	Sets out rules for establishing whether a new open access operator will affect the economic equilibrium of an existing public service contract. Yet to be voted on.
ID	Implementing decision 20.02.2015	On the strategic importance of local railway infrastructure	This only relates to Finland.
IA	Commission Implementing Regulation (EU) 869/2014	Commission Implementing Regulation on new international rail passenger services	Sets out the details of the procedure and criteria when determining whether the principal purpose of a rail service is to carry passengers between stations located in different Member States and whether the economic equilibrium of a public service contract for rail transport is compromised by an international rail passenger service.
IA	Commission Implementing Regulation (EU) 2015/10	Commission Implementing Regulation on criteria for applicants for rail infrastructure capacity	sets out the requirements for financial guarantees that an infrastructure manager may request to ensure that its legitimate expectations about future revenues are met without exceeding a level proportional to the level of activities contemplated by the applicant.
IA	Implementing regulation (EU) 2015/110	On the reporting obligations of the Member States in the framework of rail market monitoring	Sets out reporting requirements for member states as part of the rail market monitoring survey.
D	2338/2016	Directive amending 2012/34/EU establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the	Aim is to further develop the single European Railway Area by opening up domestic rail passenger markets to competition and to create a level playing field for all railway undertakings. Currently being transposed.

Type	Number	Title	Summary
		railway infrastructure (Governance)	
D	2016 No.645	Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016	<p>Implement Directive 2012/34/EU establishing a single European railway area. The changes in the Directed are designed to address issues in the EU railway market such as low levels of competition within rail, low levels of public and private investment in railways and inadequate market supervision and regulatory oversight within some EU Member States.</p> <p>The 2016 Regulations revoke and replace the infrastructure (Access and Management) Regulations 2005 (the 2005 Regulations) and amend The Railway (Licensing of Railway Undertakings) Regulations 2005.</p>
D	2005 No.3049	The Railways Infrastructure (Access and Management) Regulations 2005	<p>Implements the First Railway Package which was designed to open the international rail freight market, establish a general framework for the development of European railways, set out the conditions that freight operators must meet in order to operate services on the European rail network, and introduce a defined policy for capacity allocation and infrastructure charging.</p>
D	2005 No.3050	The Railways (Licensing of Railway Undertakings) Regulation 2005 (First Railway Package)	<p>Implements Directive 2012/34/EU establishing a Single European Railway Area.</p>
Technical Legislative Framework			
R	(EC) 352/2009	On the adoption of a common safety method on risk evaluation	<p>The purpose of the CSM is to enable mutual recognition of results from risk assessment by harmonising the risk management processes used to assess safety levels and by harmonising the exchange of safety relevant information between actors within the rail industry.</p>
R	(EC) 653/2007	On the use of a common European format for safety certificates	<p>Advises the use of a common European format for safety certificates and application documents.</p>
R	(EC) 1158/2010	On a common safety method for assessing conformity	<p>establishes a common safety method for assessing conformity with requirements for obtaining safety certificates.</p>

Type	Number	Title	Summary
R	(EU) 1077/2012	On a common safety method for supervision by national safety authorities	National Safety Authorities apply this Regulation to oversee the compliance with the legal obligation on a railway undertaking or infrastructure manager to use a safety management system to ensure the control of all risks associated with their activities.
R	(EU) 1078/2012	On a common safety method for monitoring to be applied by railway undertakings, infrastructure managers after receiving a safety certificate	Sets out a harmonised framework for monitoring. It is applied by railway undertakings, infrastructure managers and entities in charge of maintenance to enable the effective management of safety of the railway system during its operation and maintenance activities.
R	(EU) 201/2011	On the model of declaration of conformity to an authorised type of railway vehicle	This Regulation sets out the form that a declaration of conformity for an authorised type of railway vehicle should take.
R	(EU) 445/2011	On a system of certification of entities in charge of maintenance for freight wagons	This applies to any ECM for freight wagons to be used on the EU railway network. The purpose of the system of certification is to provide evidence that an ECM has established its maintenance system and can meet the requirements set out in the ECM Regulation.
R	(EU) 2016/796	On the European Union Agency for Railways and repealing Regulation (EC) No 991/2004	The European Union Agency for Railways was set up through the regulation (EC) No 881/2004 to help create this integrated railway area by reinforcing safety and interoperability. With regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways the previous regulation (EC) No 881/2004 has been repealed.
R		Regulations relating to Technical Specifications for interoperability (TSIs)	Various detailed TSIs sit under this.
D	2006 No.599	The Railways and Other Guided Transport Systems (Safety Regulations) 2006 (ROGS) (Second Railway Package);	Introduced to put the requirements of the 2004 European Railway Safety Directive into practice in Great Britain. The directive aims to continue to remove barriers to providing international transport services by creating a common framework

Type	Number	Title	Summary
			for railway safety across the European Union. This sits alongside the European Interoperability Directive, which aims to remove the technical problems involved in running trains between member states.
D	2006 No.397	The Railways (Interoperability) Regulations 2006	Implements the Second Railway package in the UK.
D	2006 No.598	The Railways (Access to Training Services) Regulations 2006	Implements the Second Railway Package in the UK.
D	2010 No.724	The Train Driving Licences and Certificates Regulations 2010	Sets out the requirement to hold a licence and certificate to drive a train operating on the mainline railway.
D	(EU) 2016/798	Directive on 2016/798 Railway Safety	Directive (EU) 2016/798 was adopted by the European Commission on 11 May 2016 as part of the Fourth Railway Package. This is a recast of to revise the Railway Safety Directive and Member States have until 16 June 2019 to transpose the requirements into domestic legislation. Yet to be transposed.
D	(EU) 2016/797	Directive 2016/797 on the Interoperability of the rail system within the European Union	Part of the technical pillar of the 4th Railway Package. Yet to be transposed.
Other rail legislation			
R	(EC) 1371/2007	2007 on rail passengers' rights and obligations (part of the Third Railway Package)	Ensures basic rights for passengers, for example, with regard to insurance, ticketing, and for passengers with reduced mobility.
R	Proposal for a Regulation amending Regulation (EC) No 1370/2007	Concerning the opening of the market for domestic passenger transport services by rail (PSO)	To open domestic rail passenger markets from 2020, so that railway operators can provide services across the EU. More competitive pressure is expected to lead to more frequent trains, and higher quality services better in tune with customer needs.
IA	Commission Implementing Regulation (EU)2015/429	Setting out the modalities to be followed for the application of the charging for the cost of noise effects	Sets out the modalities to be followed for the application of the charging for the cost of noise effects. It harmonises the charging principles and thus encourages more Member States to introduce noise charging.

Type	Number	Title	Summary
D	SI 2009/2970	The Rail Passengers' Rights and Obligations Exemptions Regulation 2010	Implements the third Railway Package in the UK which ensures basic rights for passengers, for example, with regard to insurance, ticketing, and for passengers with reduced mobility.
D	2009 No.1122	The Railways Infrastructure (Access and Management) Amendment Regulation 2009	Implements Directive 2007/58/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.
Legislative measures requiring a policy position			
R	(EC) 1315/2013	On Union guidelines for the development of the trans-European transport network	The TEN-T Union Guidelines set out objectives, priorities and outlines of measures for establishing and developing networks, to create the framework for identifying projects of common interest.
R	(EU) 1316/2013	Establishing the Connecting Europe Facility	The CEF governs EU funding in the transport, energy and telecommunications sectors during the period 2014 – 2020.
R	(EC) 913/2010	Concerning a European rail network for competitive freight	The Regulation requests Member State to establish international market-oriented Rail Freight Corridors to meet three challenges: <ul style="list-style-type: none"> 1. strengthening co-operation between Infrastructure Managers on key aspects such as allocation of path, deployment of interoperable systems and infrastructure development; 2. striking the right balance between freight and passenger traffic along the Rail Freight Corridors, giving adequate capacity and priority for freight in line with market needs and ensuring that common punctuality targets for freight trains are met; and 3. promoting intermodality between rail and other transport modes by integrating terminals into the corridor management and development.

3.1.1 Detailed proposals

Whilst the titles of the three proposed Statutory Instruments (SIs) are included in Annex B of the consultation response template, no text is proposed at this stage. This does not allow us to comment on the substantive consultation question as to the technical inoperabilities.

For example, while the Government has made it clear that it does not intend to make policy changes using the so-called Henry VIII powers required under Clause 7 of the Withdrawal Bill, this cannot be

certain without first having sight of the proposed text. Indeed, any change where a choice of institutional responsibility is made, is inherently a policy decision. It should be noted that the Withdrawal Bill itself is still being scrutinised in the Houses of Parliament and some changes to the scope of the Henry the VIII powers are being proposed which may clarify the application of the powers.

Furthermore, there is no detail contained within the SI list as to which measures in Table 1 of the consultation will necessarily be addressed by which SI.

Therefore, without further detail and clarity, RDG cannot comment fully on the consultation and the proposal, and furthermore given the complexity of the transpositions, full scrutiny can only be provided once the final detail is provided.

Type	Number	Title	Proposed Statutory Instrument
IA	Commission Implementing Regulation (EU) 2015/171	On certain aspects of the procedure of licensing railway undertakings	None proposed (although could be wrapped into SI2)
IA	Commission Implementing Regulation (EU) 2017/2177	On access to service facilities and rail related services	None proposed (although could be wrapped into SI2)
R	(EC) 1370/2007	On public passenger transport services by rail and by road	SI 1 - To make corrections to EU Regulation 1370/2007, as to be amended by EU Regulation 2338/2016.
IA	Implementing Regulation (EU) 2015/909	On the modalities for the calculation of the cost that is directly incurred as a result of operating the train service	None proposed (although could be wrapped into SI2)
IA	Implementing Regulation (EU) 2016/545	On procedures and criteria concerning framework agreements for the allocation of rail infrastructure capacity	None proposed (although could be wrapped into SI2)
IA	Implementing regulation (EU) 2018/XXXX	On the Economic Equilibrium Test	None proposed (although could be wrapped into SI2)
ID	Implementing decision 20.02.2015	On the strategic importance of local railway infrastructure	Not relevant
IA	Commission Implementing Regulation (EU) 869/2014	Commission Implementing Regulation on new international rail passenger services	None proposed (although could be wrapped into SI2)
IA	Commission Implementing	Commission Implementing Regulation on criteria for	None proposed (although could be wrapped into SI2)

Type	Number	Title	Proposed Statutory Instrument
	Regulation (EU) 2015/10	applicants for rail infrastructure capacity	
IA	Implementing regulation (EU) 2015/110	On the reporting obligations of the Member States in the framework of rail market monitoring	None proposed
D	2338/2016	Directive amending 2012/34/EU establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure (Governance)	SI 2 - To make corrections to The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 as to be amended by The Railways (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations 2016
D	2016 No.645	Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016	SI 2 - To make corrections to The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 as to be amended by The Railways (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations 2016
D	2005 No.3049	The Railways Infrastructure (Access and Management) Regulations 2005	Wrapped into Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016
D	2005 No.3050	The Railways (Licensing of Railway Undertakings) Regulation 2005 (First Railway Package)	SI 3 - To amend the Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3030) to ensure that those parts that relate to operator licensing work effectively after the UK leaves the EU.

3.1.2 Policy changes

RDG operator members would like to note that any drafting changes made during the 'transposition', must only reflect established current policy. Changes required to implement or make passive provision for future policy should be separately consulted and agreed upon via the ordinary legislative process where such changes are required.

3.1.3 Costs to industry

The drafting of the SIs, and the industry scrutiny required to ensure we have legislation fit for the future will, and has already, incurred costs. Significant resource is required to review legislative changes, even when these are hoped to be largely technical in character. To minimise industry cost, RDG is leading

on this activity on behalf of the industry, but RDG's resources will, and have already, been increased to support this activity.

3.2 Consultation questions

What are the main technical inoperabilities that we will need to address in these EU Exit SIs?

The RDG would like to understand how each piece of European rail legislation fits into the DfT's plans on SIs. In addition, in order to make the consultation meaningful, RDG would like to see the proposed text changes to each of the regulations and SIs. Without the strategic oversight and these detailed proposals, the RDG is unable to provide a response to the specific question.

The RDG and its members encourage the DfT to publish a policy note to accompany the SIs and consult on the full text when this becomes available.