

**EXPLANATORY MEMORANDUM TO
THE RAILWAY (LICENSING OF RAILWAY UNDERTAKINGS) REGULATIONS
2005**

2005 No. 3050

**THE RAILWAYS INFRASTRUCTURE (ACCESS AND MANAGEMENT)
REGULATIONS 2005**

2005 No. 3049

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 These Regulations implement three European Directives, known collectively as the First Rail Package (see paragraph 4 for further details).
 - 2.2 The Railway (Licensing of Railway Undertakings) Regulations 2005 provide the Office of Rail Regulation (ORR) with the power to grant licences to railway undertakings, established within GB, that authorise them to run freight and passenger train services. The ORR will only issue a licence if it is satisfied that the applicant can demonstrate good repute, financial fitness, professional competence and cover for civil liability on an ongoing basis. Licences are valid throughout the European Union and all European Economic Area States.
 - 2.3 The Railways Infrastructure (Access and Management) Regulations 2005 sets 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. The instrument assigns the functions of the regulatory body to the Office of Rail Regulation. 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.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.

4. Legislative Background

- 4.1 These instruments are being made to implement the First Package of EU Rail Directives and some elements of the Second Rail Package. Both instruments are made under the powers in section 2(2) of the European Communities Act 1972.
- 4.2 The Railway (Licensing of Railway Undertakings) Regulations 2005 implement Directive 95/18/EC on the licensing of railway undertakings as amended by Directives 2001/13/EC and 2004/49/EC. Before it was amended by these Directives in 2001 and 2004, Directive 95/18/EC had been implemented in Great Britain by the Railways Regulations 1998 (S.I. 1998/1340).
- 4.3 In addition, the Railway (Licensing of Railway Undertakings) Regulations 2005 establish a scheme for requiring those who provide train services to hold statements of national regulatory provisions ('SNRP' - Part 3 of the Regulations). This scheme mirrors as far as possible the existing domestic licensing regime set up under the Railways Act 1993. All existing licences have a Part I which deals with scope, a Part II on interpretation, a Part III on conditions, and a Schedule on terms as to revocation. It is intended that the current structure is replicated between both the European licence and the SNRP. The Regulations make consequential changes to existing legislation so as to bring it into a uniform legislative system with Community law, and avoid any overlapping with Community requirements.
- 4.4 The Railways Infrastructure (Access and Management) Regulations 2005 implement Directive 91/440/EEC on developing the Community's railways, as amended by Directives 2001/12/EC and 2004/51/EC; and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, as amended by Directive 2004/49/EC. Before it was amended by the Directives referred to in this paragraph, Council Directive 91/440/EEC had been implemented in Great Britain by the Railways Regulations 1998 (S.I. 1998/1340), which are revoked by these Regulations.
- 4.5 The UK Government is currently subject to infraction proceedings for our failure to notify transposition measures on the First Rail Package.
- 4.6 A transposition note for each instrument is at Annex A.
- 4.7 A brief scrutiny history is attached at Annex B.

5. Extent

- 5.1 These instruments apply to Great Britain.

6. European Convention on Human Rights

- 6.1 Derek Twigg the Parliamentary Under Secretary of State for Transport has made the following statement regarding Human Rights:
- 6.2 In my view the provisions of the Railway (Licensing of Railway Undertakings) Regulations 2005 and the Railways Infrastructure (Access and Management) Regulations 2005 are compatible with the Convention rights.

7. Policy background

- 7.1 The Directives being implemented support the policy objectives of the European Commission, as expressed in the Common Transport Policy, of revitalising railways throughout the EU by opening up rail markets, especially the rail freight market, to competition, and providing that access to the railway infrastructure and services in all Member States is available on a fair and non-discriminatory basis.
- 7.2 In reality the existing structure and regulation of the rail market in GB meets the vast majority of the requirements of the Directives and the Department has no policy objections to the aims of the First Rail Package. The reality, therefore, is that these Directives will have little impact in the railway market in GB, which is acknowledged as being the most liberalised in Europe.
- 7.3 Transposition in GB has been delayed by a number of factors including Railtrack's entry into administration; the need to review and modify the existing structure of the rail industry (which has recently led to the passing of the Railways Act 2005) and to ensure that the new structure is compliant with the Directive requirements; the difficulties of combining the changes with existing railway structures, roles and responsibilities; and major private finance and private sector involvement in projects like Channel Tunnel Rail Link and Channel Tunnel that have needed careful consideration.
- 7.4 The Department carried out a consultation exercise on the draft regulations and sent out over one hundred and seventy copies of the consultation paper. Twenty nine responses were received (including all of the key rail industry stakeholders). An analysis of the responses was completed and consultees views taken into consideration, a copy of the consultation report is available on the Department's website at www.dft.gov.uk
- 7.5 In relation to the Railway (Licensing of Railway Undertakings) Regulations 2005 the main issues on which views were sought were:
- our proposal to have a European licence plus an associated SNRP;
 - the payment of the annual levy to the ORR being attached to the European licence rather than the SNRP; and
 - the transitional arrangements for holders of existing licences.
- 7.6 Respondents broadly supported the approach of having a European licence and an associated SNRP. Some concern was raised about what the ORR could include as a SNRP condition. The provision on 'SNRP conditions' is consistent with Article 12 of 95/18/EC, as amended, which allows Member States to

apply national law and regulatory provisions in addition to the European licence requirements and specifies certain conditions that may be imposed. To provide the industry with assurance over what the ORR can include as a SNRP condition, the ORR must have regard to its section 4 duties under the Railways Act 1993 when setting such conditions.

- 7.7 All those who commented on the annual levy to the ORR being attached to the European licence rather than the SNRP thought this would be problematic as it would be discriminatory against operators licensed in GB. Following further legal advice the Department is satisfied that it is lawful for the payment of the annual levy to be a condition of the SNRP and the Regulations have been amended accordingly.
- 7.8 With regards to the proposed transitional arrangements for railway undertakings who fall under the scope of the Railway (Licensing of Railway Undertakings) Regulations 2005 and are currently authorised to operate under the Railways Act 1993 or the Railways Regulations 1998, nearly all those who responded to this question thought that the proposed transitional arrangements seemed appropriate. Concern was raised that licence holders with bespoke conditions should see these carried over into the new regime and the Regulations have been amended to allow this.
- 7.9 In relation to the Railways Infrastructure (Access and Management) Regulations 2005 the main issues on which views were sought were:
- the policy intention of opening up in principle access to services and facilities and the proposed scope of the draft regulations;
 - whether the draft regulations afford the rights to apply for access as envisaged by the First Rail Package and access to training facilities;
 - whether the draft regulations accurately reflected the processes and requirements of Directive 2001/14/EC relating to allocation of infrastructure capacity;
 - whether the draft regulations fully captured the appeal rights afforded by article 30 of Directive 2001/14/EC; and
 - the proposal to abolish the International Rail Regulator.
- 7.10 Most respondents broadly supported the Department's policy intention of opening up in principle access to services and facilities. However, nearly all respondents requested more clarity on the scope of the draft regulations. In light of this we have produced guidance, in consultation with key stakeholders, on the scope of both sets of Regulations which will be available on the Department's website when the Regulations come into force. We have also amended the scope of the Railways Infrastructure (Access and Management) Regulations 2005 to provide greater clarity.
- 7.11 Most respondents agreed that the draft regulations did afford the rights to apply for access as envisaged by the First Rail Package. However, concern was raised that the draft regulations included a requirement from the Safety Directive (part of the Second Rail Package) on access to training facilities for train drivers. In light of the views received, and further legal advice, the provision providing access to training facilities for train drivers has been removed from the Regulations and will now be implemented at the same time the rest of the Safety Directive - expected later this year.

- 7.12 Those who commented on whether the draft regulations accurately reflected the processes and requirements of Directive 2001/14/EC relating to the allocation of infrastructure capacity broadly agreed that this was the case. A number of detailed comments were received on how the processes would work in practice and these have been taken into consideration in finalising the Regulations.
- 7.13 Most of the respondents who commented on whether the draft regulations fully captured the appeal rights afforded by article 30 of Directive 2001/14/EC agreed that this had been achieved. However, a couple of respondents pointed out that the draft regulations had failed to transpose Article 30(f) of Directive 2001/14/EC as amended by Article 30 of Directive 2004/49/EC, the Regulations have been amended accordingly.
- 7.14 The abolishment of the International Rail Regulator and the assignment of all of the regulatory functions arising from the First Rail Package Directives to the ORR was supported by all those who responded to the question.
- 7.15 Apart from the fact that the Regulations implement Directives, the changes implemented by the Regulations are not in themselves politically or legally important.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached at Annex C and includes information on the consultation exercise.
- 8.2 The impact on the public sector is minimal. The Office of Rail Regulation is the main public body affected as both sets of Regulations place a number of duties on the regulatory body. However, many of these functions are already carried out by the ORR, and it is assumed that any extra work created by the implementation of these Regulations will be accommodated within existing resources.

9. Contact

Leo McDaid at the Department for Transport (Tel: 020 7944 5595 or e-mail: leo.mcdaid@dft.gsi.gov.uk) can answer any queries regarding the instruments.

Transposition Notes

Transposition Note for Council Directive 95/18/EC on the licensing of railway undertakings, as amended by Directives 2001/13/EC and 2004/49/EC of the European Parliament and the Council

This Transposition Note outlines how the main elements of Directive 95/18/EC (as amended) are implemented in Great Britain by the Railway (Licensing of Railway Undertakings) Regulations 2005 ('the 2005 Regulations').

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

Before it was amended by Directives 2001/13/EC and 2004/49/EC, Council Directive 95/18/EC was implemented by the Railways Regulations 1998 (S.I. 1998/1340).

In this Transposition Note, "ORR" means the Office of Rail Regulation.

Directive 95/18/EC, as amended by 2001/13 and 2004/49

Article	Objective	Implementation	Responsibility
1.2 (as amended by Article 1.1 of Directive 2001/13)	This allows member states to exclude some undertakings from the scope of the Directive.	This requirement has been implemented by regulation 4(2) of the 2005 Regulations.	The Secretary of State for Transport, through the 2005 Regulations.
3 (as amended by Article 1.3 of Directive 2001/13)	Requires each member state to designate a body responsible for issuing licences, which does not provide rail services itself and is independent of bodies or undertakings that do so.	This requirement has been implemented by regulation 6(1) of the 2005 Regulations.	Through the 2005 Regulations, the Secretary of State for Transport has designated the ORR to be this body.
4.1	This entitles railway undertakings to apply for a licence in the member state in which it is established.	This requirement has been implemented by regulation 6(3) of the 2005 Regulations.	ORR
4.2	States that member states shall not issue licences or extend their validity where the requirements of the Directive have not been satisfied.	This requirement has been implemented by regulation 6(7) of the 2005 Regulations.	ORR
4.3	States that railway undertakings will be authorised to receive a licence, if they fulfil the Directive's requirements.	This requirement has been implemented by regulation 6(7) of the 2005 Regulations.	ORR

Article	Objective	Implementation	Responsibility
4.4	States that no railway undertaking shall be permitted to provide rail transport services without a licence.	This requirement has been implemented by regulation 5(1) of the 2005 Regulations.	ORR through enforcement action.
4.5 (as amended by Article 1.4 of Directive 2001/13)	States that a licence shall be valid throughout the EU.	This requirement has been implemented by regulation 5(4) of the 2005 Regulations.	ORR
5.1 and 5.2	Requires a railway undertaking to demonstrate that it will at any time be able to meet the requirements of good repute, financial fitness, professional competence and cover for its civil liability; and to provide all relevant information for this purpose.	This requirement has been implemented by regulation 6(5) and (6) of the 2005 Regulations.	ORR
6 (as amended by Article 1.5 of Directive 2001/13)	Requires member states to define the conditions under which the requirement of good repute is met in such a manner as to exclude railway undertakings in certain circumstances for example if it has been convicted of a serious offence or declared bankrupt.	This requirement has been implemented by Schedule 2, paragraphs 1 - 5 to the 2005 Regulations.	The Secretary of State for Transport has defined the conditions through the 2005 Regulations; ORR has responsibility for determining whether an undertaking meets the conditions.
7 and the Annex, Section I	Sets out the requirements that need to be met in relation to financial fitness.	This requirement has been implemented by Schedule 2, paragraphs 6 - 9 to the 2005 Regulations.	ORR
8 (as amended by Article 29.1 of Directive 2004/49)	Sets out the requirements that need to be met in relation to professional competence.	This requirement has been implemented by Schedule 2, paragraph 10 to the 2005 Regulations.	ORR
9	Requires railway undertakings to be adequately insured for cover of its liabilities in the event of accidents.	This requirement has been implemented by Schedule 2, paragraph 11 to the 2005 Regulations.	ORR

Article	Objective	Implementation	Responsibility
10.1	States that a licence shall be valid as long as the railway undertaking fulfils the obligations laid down in this Directive. A licensing authority may, however, make provision for a regular review at least every five years.	This requirement has been implemented by regulation 7(1) of the 2005 Regulations.	ORR
10.2	States that specific provisions governing the suspension or revocation of a licence may be incorporated in the licence itself.	This requirement has been implemented by regulation 7(2) of the 2005 Regulations.	ORR
11.1	Provides that the licensing authority may check a railway undertaking's compliance with the requirements of the Directive and where it is satisfied that a railway undertaking can no longer meet the requirements it must suspend or revoke the licence.	This requirement has been implemented by regulation 8(2) and (3) of the 2005 Regulations.	ORR
11.2	States that where the licensing authority of a Member State is satisfied that there is serious doubt regarding compliance with the requirements laid down in this Directive on the part of a railway undertaking to which a licence has been issued by the licensing authority of another Member State, it shall inform the latter authority without delay.	This requirement has been implemented by regulation 8(5) of the 2005 Regulations.	ORR

Article	Objective	Implementation	Responsibility
11.3	States that notwithstanding paragraph 1, where a licence is suspended or revoked on grounds of non-compliance with the requirement for financial fitness, the licensing authority may grant a temporary licence pending the re-organisation of the railway undertaking, provided that safety is not jeopardised. A temporary licence shall not, however, be valid for more than six months after its date of issue.	This requirement has been implemented by regulation 8(6) and (7) of the 2005 Regulations.	ORR
11.4	States that when a railway undertaking has ceased operations for six months or has not started operations six months after the grant of a licence, the licensing authority may decide that the licence shall be submitted for approval or be suspended. As regards the start of activities, the railway undertaking may ask for a longer period to be fixed, taking account of the specific nature of the services to be provided.	This requirement has been implemented by regulation 8(8) and (9) of the 2005 Regulations.	ORR
11.5	States that in the event of a change affecting the legal situation of an undertaking and, in particular, in the event of a merger or takeover, the licensing authority may decide that the licence shall be resubmitted for approval. The railway undertaking in question may continue operations, unless the licensing authority decides that safety is jeopardised; in that event, the grounds for such a decision shall be given.	This requirement has been implemented by regulation 8(10), (11) and (12) of the 2005 Regulations.	ORR

Article	Objective	Implementation	Responsibility
11.6	States that where a railway undertaking intends significantly to change or extend its activities, its licence shall be resubmitted to the licensing authority for review.	This requirement has been implemented by regulation 8(13) of the 2005 Regulations.	ORR
11.7	States that a licensing authority shall not permit a railway undertaking against which bankruptcy or similar proceedings are commenced to retain its licence if that authority is convinced that there is no realistic prospect of satisfactory financial restructuring within a reasonable period of time.	This requirement has been implemented by regulation 8(4) of the 2005 Regulations.	ORR
11.8 (as amended by Article 1.6 of Directive 2001/13)	Requires a licensing authority to inform the Commission, if the authority issues, suspends, revokes or amends a licence.	As regards notifying the Commission of the issue of a licence, this requirement has been implemented by regulation 6(12) of the 2005 Regulations, and as regards suspensions etc, this requirement has been implemented by regulation 8(14).	ORR
12.1 (as amended by Article 1.7 of Directive 2001/13)	Requires railway undertakings to comply with national law and regulatory provisions that are compatible with Community law and are applied in a non-discriminatory manner.	This requirement has been implemented by regulations 9, 10, and 11 and Schedule 3 to the 2005 Regulations.	ORR, through the regime of statements of national regulatory provisions.
12.2 (as amended by Article 1.7 of Directive 2001/13)	States that a railway undertaking may refer to the Commission questions of compatibility of national requirements with Community law.	This requirement has been implemented by regulation 12 of the 2005 Regulations.	ORR are to review a condition if the Commission deliver an opinion on it.
13 (as amended by Article 1.7 of Directive 2001/13)	States that railway undertakings are to respect international rail transport agreements.	No implementation through Regulations is needed.	

Article	Objective	Implementation	Responsibility
14	States that railway undertakings are to be granted a transitional period of twelve months (i.e. until 15 March 2004) for complying with the provisions of this Directive.	No implementation through Regulations is now appropriate.	
15.1	Requires that the procedures for the granting of licences shall be made public by the member state.	This requirement has been implemented by regulation 6(2) of the 2005 Regulations.	ORR
15.2	States that the licensing authority is to take its decision on a licence application within three months, and is to give reasons for a refusal.	This requirement has been implemented by regulation 6(8) and (11) of the 2005 Regulations.	ORR
15.3	States that licensing authorities' decisions are to be subject to judicial review.	No implementation through Regulations is needed.	

Transposition Note for Council Directive 91/440/EEC on the development of the Community's railways, as amended by Directives 2001/12/EC and 2004/51/EC; Council Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, as amended by Directive 2004/49/EC

This Transposition Note outlines how the main elements of Directive 91/440/EEC (as amended) and Directive 2001/14/EC (as amended) are implemented in Great Britain by the Railways Infrastructure (Access and Management) Regulations 2005 ('the 2005 Regulations').

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

Before it was amended by Directives 2001/12/EC, and 2004/51/EC, Council Directive 91/440/EEC had been implemented in Great Britain by the Railways Regulations 1998 (S.I. 1998/1340), which are revoked by these Regulations. Council Directive 2001/14/EC replaces Directive 95/19/EC which had also been implemented in Great Britain by the Railways Regulations 1998.

In this Transposition Note, "ORR" means the Office of Rail Regulation.

Directive 91/440, as amended by Directives 2001/12 and 2004/51

Article	Objective	Implementation	Responsibility
2 (as amended by Article 1.3 of Directive 2001/12)	This allows member states to exclude some undertakings from the scope of the Directive.	This requirement has been implemented by regulations 4(1), (2), (6) and (7) of the 2005 Regulations. Implementation of the articles referred to in 2.3 to the Channel Tunnel is effected in a separate set of regulations.	The Secretary of State for Transport through the 2005 Regulations.
4.1 (as amended by Article 1.6 of Directive 2001/12)	Requires member states to ensure that railway undertakings are independent from the state in management, administration, economic and accounting matters.	This requirement has been implemented by regulation 8(1) of the 2005 Regulations.	The Secretary of State for Transport through the 2005 Regulations.
4.2(as amended by Article 1.6 of Directive 2001/12)	States that whilst respecting the framework and specific charging and allocation capacity rules the infrastructure manager shall have responsibility for its own management, administration and internal control.	This requirement has been implemented by regulation 8(2) of the 2005 Regulations.	The Secretary of State for Transport through the 2005 Regulations.

Article	Objective	Implementation	Responsibility
5.1 and 5.3	Requires member states to ensure that railway undertakings adjust their activities to the market and manage those activities under responsibility of their management bodies.	No specific provision is needed to implement these requirements as existing national company law (which must be complied with in relation to licensing) and the Public Service Regulation of 1969 already discharge these requirements.	
5.2	States that railway undertakings shall determine their business plans.	This requirement has been implemented by regulation 10(3) and (4) of the 2005 Regulations.	The Secretary of State for Transport through the 2005 Regulations.
6.1 (as amended by Article 1.7 of Directive 2001/12)	Requires member states to ensure that bodies which have the functions of infrastructure manager and train service provider maintain separate profit and loss accounts and balance sheets for the two areas.	This requirement has been implemented by regulation 9(1) and (2) of the 2005 Regulations.	The Secretary of State for Transport through the 2005 Regulations.
6.2(as amended by Article 1.7 of Directive 2001/12)	States that Member States may also provide that this separation shall require the organisation of distinct divisions within a single undertaking or that the infrastructure shall be managed by a separate entity.	Member States to decide whether this requirement is needed - not implemented.	
6.3 (as amended by Article 1.7 and annex II of Directive 2001/12)	Requires that member states shall ensure that the functions of the infrastructure manager are entrusted to bodies that do not themselves provide any rail services.	This requirement has been implemented by regulations 9(3), 12(7), and 16(3) of the 2005 Regulations.	The Secretary of State for Transport through the 2005 Regulations.
6.4(as amended by Article 1.7 of Directive 2001/12)	States that the application of 6.3 shall be subject to a report by the Commission.	No implementation through Regulations is needed.	

Article	Objective	Implementation	Responsibility
7.1 (as amended by Article 1.8 of Directive 2001/12)	Requires member states to take the necessary measures for the development of their national railway infrastructure.	No specific provision is needed to implement this as the requirements of Section 4 of the Railways Act 1993, Schedule 4 of the Railways Act 2005 and the CTRL Act 1996 discharge these requirements.	
7.2 (as amended by Article 1.1 of Directive 2004/51)	Requires Member States to ensure that safety standards and rules laid down, rolling stock and railway undertakings are certified accordingly and accidents investigated.	This was deleted by 2004/51/EC.	
7.3 (as amended by Article 1.8 of Directive 2001/12)	States that Member States may also accord the infrastructure manager, financing consistent with the tasks, size and financial requirements, in particular to cover new investment.	Member States to decide whether this requirement is needed - not implemented.	
7.4 (as amended by Article 1.8 of Directive 2001/12)	Requires the infrastructure manager to draw up a business plan.	This requirement has been implemented by regulation 10(1) and (2) of the 2005 Regulations.	The Secretary of State for Transport through the 2005 Regulations.
8	Requires the infrastructure manager to charge a fee for the use of the railway infrastructure. The user fee, must be calculated in such a way as to avoid any discrimination between railway undertakings, may in particular take into account the mileage, the composition of the train and any specific requirements in terms of such factors as speed, axle load and the degree or period of utilisation of the infrastructure.	This requirement has been implemented by regulation 12(5) and (6), and paragraph 1(2) of Schedule 3 to the 2005 Regulations.	ORR to regulate or in the case of a rail link facility the Secretary of State.

Article	Objective	Implementation	Responsibility
9.1	Requires member states to set up appropriate mechanisms to help reduce indebtedness of publicly owned or controlled railway undertakings.	No specific provision is needed to implement this requirement as we do not envisage this applying to railway undertakings in GB.	
9.2	States that Member States may take the necessary measures requiring a separate debt authorisation unit to be set up within the accounting departments of such undertakings.	As linked to article 9.1 no specific provision is needed to implement this requirement.	
9.3 (as amended by Article 1.9 of Directive 2001/12)	States that aid accorded by Member States to cancel the debts referred to in this Article shall be granted in accordance with Articles 73, 87, and 88 of the Treaty.	As linked to article 9.1 no specific provision is needed to implement this requirement.	
9.4 (as amended by Article 1.10 of Directive 2001/12)	States that in the case of railway undertakings profit and loss accounts and either balance sheets or annual statement of assets and liabilities shall be kept and published for business relating to the provision of rail freight-transport services. Funds paid for activities relating to the provision of passenger-transport services as public-service remits must be shown separately in the relevant accounts and may not be transferred to activities relating to the provision of other transport services or any other business.	This requirement has been implemented by regulation 8(3) and (4) of the 2005 Regulations.	
10.1 (as amended by Article 1.11 of Directive 2001/12)	Requires the granting of access and transit rights for international groupings.	This requirement has been implemented by regulation 5(1) of the 2005 Regulations.	Enforced by ORR.

Article	Objective	Implementation	Responsibility
10.2 (as amended by Article 1.11 of 2001/12)	Requires the granting of access rights for international combined transport goods services.	This requirement has been implemented by regulation 5(2) of the 2005 Regulations which grants railway undertakings access rights necessary for the operation of any type of rail freight service.	Enforced by ORR.
10.3 (as amended by Article 1.2 of Directive 2004/51)	Requires the granting of access rights for freight services.	This requirement has been implemented by regulation 5(2) of the 2005 Regulations which grants railway undertakings access rights necessary for the operation of any type of rail freight service, in advance of 2007 implementation date.	Enforced by ORR.
10.4 (as amended by Article 1.11 of 2001/12)	At the request of a Member State or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of this Article, and within two months of receipt of such a request and after consulting the Committee referred to in Article 11a(2), decide whether the related measure may continue to be applied.	No implementation through Regulations is needed.	
10.5 (as amended by Article 1.2 of 2004/51)	Requires any railway undertaking engaged in rail transport services to conclude the necessary agreements on the basis of a contract with the infrastructure managers of the infrastructure used.	This requirement has been implemented by regulation 16(10) and (11)(b) of the 2005 Regulations.	The Secretary of State for Transport through the 2005 Regulations.
10.6 (as amended by Article 1.2 of 2004/51)	Requires the provision of track access to, and the supply of, services in terminals and ports linked to rail activities.	This requirement has been implemented by regulation 6 of the 2005 Regulations.	Enforced by ORR.

Article	Objective	Implementation	Responsibility
10.7 (as amended by Article 1.11 of 2001/12)	Requires the regulatory body to monitor the competition in the rail services market, including the rail freight transport market.	This requirement has been implemented by regulation 30 of the 2005 Regulations.	ORR.
10.8 (as amended by Article 1.2 of 2004/51)	Requires the Commission to submit a report to the European Parliament, the European Economic and Social Committee, the Committee of the Regions and the Council on the implementation of this Directive by 1 January 2006.	No implementation through Regulations is needed.	
10a (as amended by Article 1.12 of 2001/12)	Defines the Trans-European Rail Freight Network.	No implementation through Regulations is needed as implementation of Directive 2004/51 removes the need for such a definition.	
10b (as amended by Article 1.2 of 2004/51)	States that not later than 15 September 2001 the Commission shall make the necessary arrangements to monitor technical and economic conditions and market developments of European rail transport.	No implementation through Regulations is needed.	

Directive 2001/14, as amended by Directive 2004/49

Article	Objective	Implementation	Responsibility
1	This allows member states to exclude some undertakings from the scope of the Directive.	This requirement has been implemented by regulation 4(3) to (7) of the 2005 Regulations.	The Secretary of State for Transport through the 2005 Regulations.
3.1	Requires infrastructure managers to develop and publish a network statement and makes requirements as to the charge for providing copies.	This requirement has been implemented by regulation 11(1) and (7) of the 2005 Regulations.	The Secretary of State for Transport through the 2005 Regulations.

Article	Objective	Implementation	Responsibility
3.2 and annex I	The network statement shall set out the nature of the infrastructure which is available to railway undertakings. It shall contain information setting out the conditions for access to the relevant railway infrastructure. The content of the network statement is laid down in Annex I.	This requirement has been implemented by regulation 11(4) of the 2005 Regulations.	Enforced by ORR.
3.3	The network statement shall be kept up to date and modified as necessary.	This requirement has been implemented by regulation 11(5) of the 2005 Regulations.	
3.4	The network statement shall be published no less than four months in advance of the deadline for requests for infrastructure capacity.	This requirement has been implemented by regulation 11(6) of the 2005 Regulations.	
4.1	Requires member states to establish a charging framework and specific charging rules. The determination of the charge and its collection shall be performed by the infrastructure manager.	This requirement has been implemented by regulation 12(1) to (4) of the 2005 Regulations.	ORR, or for a rail link facility the Secretary of State.
4.2	Requires that where the infrastructure manager is not independent of any railway undertaking, in its legal form, organisation or decision making, the functions in relation to the establishing and determining of charges will be performed by a charging body that is so independent.	This requirement has been implemented by regulation 12(7) of the 2005 Regulations.	The Secretary of State for Transport through the 2005 Regulations.
4.3	Requires infrastructure managers to co-operate to achieve the efficient operation of train services which cross more than one infrastructure network.	This requirement has been implemented by regulation 12(10) and (11) of the 2005 Regulations.	

Article	Objective	Implementation	Responsibility
4.4	Requires that except where specific arrangements are made the infrastructure manager must ensure that the charging scheme in use is based on the same principles over the whole network.	This requirement has been implemented by Schedule 3 paragraph 1(3) to the 2005 Regulations.	ORR or in the case of a rail link facility the Secretary of State.
4.5	Requires infrastructure managers to ensure that the application of the charging scheme results in non-discriminatory charges.	This requirement has been implemented by Schedule 3 paragraph 1(1) to the 2005 Regulations.	ORR or in the case of a rail link facility the Secretary of State.
4.6	States an infrastructure manager or charging body shall respect the commercial confidentiality of information provided to it by applicants.	This requirement has been implemented by regulation 12(12) of the 2005 Regulations.	
5.1 and Annex II	Railway undertakings shall, on a non-discriminatory basis, be entitled to a minimum access package and track access to service facilities.	This requirement has been implemented by regulation 7(1) to (4) and Schedule 2 to the 2005 Regulations.	Enforced by ORR.
5.2	States that where the infrastructure manager offer any of the range of services in Annex II, point 3 as additional services he shall supply them upon request to a railway undertaking.	This requirement has been implemented by regulation 7(5) and Schedule 2 to the 2005 Regulations.	Enforced by ORR.
5.3	States that railway undertakings may request a range of ancillary services, listed in Annex II, point 4 from the infrastructure manager or from other suppliers.	This requirement has been implemented by regulation 7(6) and Schedule 2 to the 2005 Regulations.	Enforced by ORR.
6.1	Requires member states to lay down conditions, including where appropriate advance payment, to ensure that, under normal business conditions and over a reasonable time period the accounts of the infrastructure manager at least balance income, with infrastructure expenditure.	This requirement has been implemented by regulation 13(1) of the 2005 Regulations. The second paragraph of article 6.1 is discretionary and has not been implemented.	ORR, or in the case of a rail link facility, the Secretary of State.

Article	Objective	Implementation	Responsibility
6.2	Requires that the infrastructure manager is to be provided with incentives to reduce costs of the provision of infrastructure and the level of access charges.	This requirement has been implemented by regulation 13(2) of the 2005 Regulations.	ORR, or in the case of a rail link facility, the Secretary of State.
6.3	Requires Member States to ensure that the provision set out in 6.2 is implemented, either through a contractual agreement or through the establishment of appropriate regulatory measures.	This requirement has been implemented by regulation 13(3) of the 2005 Regulations.	ORR, or in the case of a rail link facility, the Secretary of State.
6.4	States that where a contractual agreement exists, the terms of the contract and the structure of the payments agreed to provide funding to the infrastructure manager shall be agreed in advance for the whole of the contract period.	As article 6.3 is implemented through regulation no specific provision is needed to implement this requirement.	
6.5	States that a method for apportioning costs shall be established.	This requirement has been implemented by regulation 12(1) and (2) of the 2005 Regulations.	
7.1	States that charges for the use of infrastructure shall be paid to the infrastructure manager and used to fund his business.	This requirement has been implemented by regulation 12(5) of the 2005 Regulations.	
7.2	States that Member States may require the infrastructure manager to provide all necessary information on the charges imposed.	This requirement has been implemented by regulation 12(9) of the 2005 Regulations.	
7.3	States that the charges for the minimum access package and track access to service facilities shall be set at the cost that is directly incurred as a result of operating the train service.	This requirement has been implemented by Schedule 3 paragraph 1(4) to the 2005 Regulations.	Enforced by ORR.

Article	Objective	Implementation	Responsibility
7.4	States that the infrastructure charge may include a charge which reflects the scarcity of the identifiable segment of the infrastructure during periods of congestion.	This requirement has been implemented by Schedule 3 paragraph 1(8) to the 2005 Regulations.	ORR or in the case of a rail link facility the Secretary of State.
7.5	States that the infrastructure charge may be modified to take account of the cost of the environmental effects caused by the operation of the train.	Member States to decide whether this requirement is needed - not implemented.	
7.6	States that to avoid undesirable disproportionate fluctuations, the charges in 7.3, 7.4, and 7.5 may be averaged over a reasonable spread of train services and times.	This requirement has been implemented by Schedule 3 paragraph 1(9) to the 2005 Regulations.	ORR or in the case of a rail link facility the Secretary of State.
7.7	States that the supply of services in Annex II, point 2, shall not be covered by Article 7.	This requirement has been implemented by Schedule 3 paragraph 1(5) and (6) to the 2005 Regulations.	
7.8	States that where the services listed in Annex II, points 3 and 4 as additional ancillary services are offered only by one supplier the charge imposed for such a service shall relate to the cost of providing it, calculated on the basis of the actual level of use.	This requirement has been implemented by Schedule 3 paragraph 1(7) to the 2005 Regulations.	ORR.
7.9	States that charges may be levied for capacity used for the purpose of infrastructure maintenance.	Member States to decide whether this requirement is needed - not implemented.	
8.1	States that in order to obtain full recovery of the costs incurred by the infrastructure manager a Member State can levy mark-ups on the basis of efficient, transparent and non-discriminatory principles.	This requirement has been implemented by Schedule 3 paragraph 2 to the 2005 Regulations.	ORR or in the case of a rail link facility the Secretary of State.

Article	Objective	Implementation	Responsibility
8.2	States that for specific investment projects 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.	This requirement has been implemented by Schedule 3 paragraph 3 to the 2005 Regulations.	ORR or in the case of a rail link facility the Secretary of State.
8.3	States that to prevent discrimination, it shall be ensured that any given infrastructure manager's average and marginal charges for equivalent uses of his infrastructure are comparable and that comparable services in the same market segment are subject to the same charges.	This requirement has been implemented by Schedule 3 paragraph 4 to the 2005 Regulations.	ORR or in the case of a rail link facility the Secretary of State.
8.4	States that if an infrastructure manager intends to modify the essential elements of the charging system referred to in paragraph 8.1, it shall make them public at least three months in advance.	This requirement has been implemented by Schedule 3 paragraph 5 to the 2005 Regulations.	ORR or in the case of a rail link facility the Secretary of State.
9.1	States that without prejudice to Articles 81, 82, 86 and 87 of the Treaty and notwithstanding Article 7.3 of this Directive, any discount on the charges levied on a railway undertaking by the infrastructure manager, for any service, shall comply with the criteria set out in Article 9.	This requirement has been implemented by Schedule 3 paragraph 6(1) to the 2005 Regulations.	ORR or in the case of a rail link facility the Secretary of State.
9.2	States that with the exception of paragraph 3, discounts shall be limited to the actual saving of the administrative cost to the infrastructure manager.	This requirement has been implemented by Schedule 3 paragraph 6(2) to the 2005 Regulations.	ORR or in the case of a rail link facility the Secretary of State.

Article	Objective	Implementation	Responsibility
9.3	States that infrastructure managers may introduce schemes available to all users of the infrastructure, for specified traffic flows, granting time limited discounts to encourage the development of new rail services, or discounts encouraging the use of considerably underutilised lines.	This requirement has been implemented by Schedule 3 paragraph 6(3) to the 2005 Regulations.	ORR or in the case of a rail link facility the Secretary of State.
9.4	States that discounts may relate only to charges levied for a specified infrastructure section.	This requirement has been implemented by Schedule 3 paragraph 6(5) to the 2005 Regulations.	ORR or in the case of a rail link facility the Secretary of State.
9.5	States that similar discount schemes shall apply for similar services.	This requirement has been implemented by Schedule 3 paragraph 6(6) to the 2005 Regulations.	ORR or in the case of a rail link facility the Secretary of State.
10	States that Member States may put in place a time-limited compensation scheme for the use of railway infrastructure for the demonstrably unpaid environmental, accident and infrastructure costs of competing transport modes in so far as these costs exceed the equivalent costs of rail.	Member States to decide whether this requirement is needed - not implemented.	
11.1	Requires that infrastructure charging schemes shall through a performance scheme encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the railway network.	This requirement has been implemented by regulation 14(1) and (2) of the 2005 Regulations.	ORR, or in the case of a rail link facility, the Secretary of State.
11.2	States that the basic principles of the performance scheme shall apply throughout the network.	This requirement has been implemented by regulation 14(3) of the 2005 Regulations.	ORR, or in the case of a rail link facility, the Secretary of State.

Article	Objective	Implementation	Responsibility
12	States that infrastructure managers may levy an appropriate charge for capacity that is requested but not used. This charge shall provide incentives for efficient use of capacity.	This requirement has been implemented by regulation 15 of the 2005 Regulations.	ORR or in the case of a rail link facility the Secretary of State.
13.1	States that once infrastructure capacity has been allocated it cannot be traded.	This requirement has been implemented by regulation 16(6) to (8) of the 2005 Regulations.	Enforced by ORR.
13.2	States that the right to use a specific train path can only be granted for a maximum duration of one working timetable period (one year).	This requirement has been implemented by regulations 16(9) and 18(1) of the 2005 Regulations.	Enforced by ORR.
13.3	States that the definition of respective rights and obligations between infrastructure managers and applicants in respect of any allocation of capacity shall be laid down in contracts or legislation.	This requirement has been implemented by regulation 16(10) of the 2005 Regulations.	
14.1	Allows for member states to establish a framework for the allocation of infrastructure capacity. The infrastructure manager shall perform the capacity allocation process and shall ensure that capacity is allocated on a fair and non-discriminatory basis.	This requirement has been implemented by regulation 16(1), (2), and (11)(a) of the 2005 Regulations.	ORR, or in the case of a rail link facility, the Secretary of State.
14.2	Where the infrastructure manager, in its legal form, organisation or decision-making functions is not independent of any railway undertaking, the functions referred to in paragraph 1 and described in this chapter shall be performed by an allocation body that is independent in its legal form, organisation and decision-making from any railway undertaking.	This requirement has been implemented by regulation 16(3) of the 2005 Regulations.	

Article	Objective	Implementation	Responsibility
14.3	States that infrastructure managers and allocation bodies shall respect the commercial confidentiality of information provided to them.	This requirement has been implemented by regulation 16(11)(c) of the 2005 Regulations.	
15.1	Requires infrastructure managers to cooperate to enable the efficient creation and allocation of infrastructure capacity which crosses more than one network. They shall organise international train paths. They shall establish such procedures as are appropriate to enable this to take place. These procedures shall be bound by the rules set out in this Directive. The procedure established in order to coordinate the allocation of infrastructure capacity at an international level shall associate representatives of infrastructure managers for all railway infrastructures whose allocation decisions have an impact on more than one other infrastructure manager. Appropriate representatives of infrastructure managers from outside the Community may be associated with these procedures. The Commission shall be informed and invited to attend as an observer.	This requirement has been implemented by regulation 17(1), (2)(a), (4), (5), and (6) of the 2005 Regulations.	
15.2	States that at any meeting or other activity undertaken to permit the allocation of infrastructure capacity for train services, decisions shall only be taken by representatives of infrastructure managers.	This requirement has been implemented by regulation 17(7) of the 2005 Regulations.	

Article	Objective	Implementation	Responsibility
15.3	States that the participants in the cooperation referred to 15.1 shall ensure that its membership, methods of operation and all relevant criteria which are used for assessing and allocating infrastructure capacity be made publicly available.	This requirement has been implemented by regulation 11(4)(f)(v) of the 2005 Regulations.	
15.4	States that working in cooperation infrastructure managers shall assess the need for, and may where necessary propose and organise international train paths to facilitate the operation of freight trains which are subject to an ad hoc request as referred to in Article 23.	This requirement has been implemented by regulation 17(8) and (9) of the 2005 Regulations.	
16.1	States that applications for infrastructure capacity may be made by railway undertakings and their international groupings and, in the territories of those Member States which so allow, by other applicants complying with the definition in Article 2(b).	This requirement has been implemented by regulation 16(4) of the 2005 Regulations.	
16.2 and 16.3	States that the infrastructure manager may set requirements with regard to applicants to ensure that its legitimate expectations about future revenues and utilisation of the infrastructure are safeguarded.	Member States to decide whether this requirement is needed - not implemented.	
17.1	Provides the ability for applicants to enter into framework agreements which specify the characteristics of the infrastructure capacity required by and offered to the applicant over a period of time exceeding one working timetable.	This requirement has been implemented by regulation 18(1), (3) and (11) of the 2005 Regulations.	Enforced by ORR.

Article	Objective	Implementation	Responsibility
17.2	States that framework agreements shall not be such as to preclude the use of the relevant infrastructure by other applicants or services.	This requirement has been implemented by regulation 18(4) of the 2005 Regulations.	
17.3	States that a framework agreement shall allow for the amendment or limitation of its terms to enable better use to be made of the railway infrastructure.	This requirement has been implemented by regulation 18(5) of the 2005 Regulations.	
17.4	States that a framework agreement may contain penalties should it be necessary to modify or terminate the agreement.	This requirement has been implemented by regulation 18(6) of the 2005 Regulations.	
17.5	States that framework agreements shall in principle be for a period of five years. The infrastructure manager may agree to a shorter or longer period in specific cases. Any period longer than five years shall be justified by the existence of commercial contracts, specialised investments or risks. Any period longer than 10 years shall be possible only in exceptional cases, in particular, where there is large-scale, long-term investment, and particularly where such investment is covered by contractual commitments.	This requirement has been implemented by regulation 18(7), (8) and (9) of the 2005 Regulations.	
17.6	States that whilst respecting commercial confidentiality, the general nature of each framework agreement shall be made available to any interested party.	This requirement has been implemented by regulation 18(10) of the 2005 Regulations.	
18.1	Requires the infrastructure manager to adhere to the timetable for capacity allocation set out in Annex III.	This requirement has been implemented by regulation 16(5) and schedule 4 of the 2005.	

Article	Objective	Implementation	Responsibility
18.2	Requires infrastructure managers to agree with the other relevant infrastructure managers concerned which international train paths are to be included in the working timetable, before commencing consultation on the draft working timetable. Adjustments shall only be made if absolutely necessary.	This requirement has been implemented by regulation 17(1), (2)(b) and (3) of the 2005 Regulations.	
19.1	States that applicants may apply on the basis of public or private law to the infrastructure manager to request an agreement granting rights to use railway infrastructure against a charge as provided for in chapter II.	This requirement has been implemented by regulation 19(1) of the 2005 Regulations.	
19.2	States that requests relating to the regular working timetable must adhere to the deadlines set out in Annex III.	This requirement has been implemented by regulation 19(2) of the 2005 Regulations.	
19.3	States that an applicant who is a party to a framework agreement shall apply in accordance with that agreement.	This requirement has been implemented by regulation 18(2) of the 2005 Regulations.	
19.4	States that applicants may request infrastructure capacity crossing more than one network by applying to one infrastructure manager. That infrastructure manager shall then be permitted to act on behalf of the applicant to seek capacity with the other relevant infrastructure managers.	This requirement has been implemented by regulation 19(3) of the 2005 Regulations.	

Article	Objective	Implementation	Responsibility
19.5	Requires infrastructure managers to ensure that, for infrastructure capacity crossing more than one network, applicants may apply direct to any joint body which the infrastructure managers may establish.	This requirement has been implemented by regulation 19(4) of the 2005 Regulations.	
20.1	Requires the infrastructure manager to meet as far as possible all requests for capacity.	This requirement has been implemented by regulation 20(1) of the 2005 Regulations.	
20.2	States that the infrastructure manager may give priority to specific services within the scheduling and coordination process but only as set out in Articles 22 and 24.	This requirement has been implemented by regulation 20(2) of the 2005 Regulations.	
20.3	Requires the infrastructure manager to consult interested parties about the draft working timetable and allow them at least one month to present their views.	This requirement has been implemented by regulation 20(3) and (7) of the 2005 Regulations.	
20.4	Requires the infrastructure manager to take appropriate measures to deal with any concerns that are expressed.	This requirement has been implemented by regulation 20(6) of the 2005 Regulations.	
21.1	States that during the scheduling process referred to in Article 20, when the infrastructure manager encounters conflicts between different requests he shall attempt, through coordination of the requests, to ensure the best possible matching of all requirements.	This requirement has been implemented by regulation 20(4) of the 2005 Regulations.	
21.2	States that when a situation requiring coordination arises, the infrastructure manager shall have the right, within reasonable limits, to propose infrastructure capacity that differs from that which was requested.	This requirement has been implemented by regulation 20(4) of the 2005 Regulations.	

Article	Objective	Implementation	Responsibility
21.3	Requires the infrastructure manager to attempt, through consultation with the appropriate applicants, to achieve a resolution of any conflicts.	This requirement has been implemented by regulation 20(4) of the 2005 Regulations.	
21.4	States that the principles governing the coordination process shall be defined in the network statement. These shall in particular reflect the difficulty of arranging international train paths and the effect that modification may have on other infrastructure managers.	This requirement has been implemented by regulation 11(4)(f)(iv) of the 2005 Regulations.	Enforced by ORR.
21.5	When requests for infrastructure capacity cannot be satisfied without coordination, the infrastructure manager shall attempt to accommodate all requests through coordination.	This requirement has been implemented by regulation 20(4) of the 2005 Regulations.	
21.6	States that without prejudice to the existing appeal procedures and to the provisions of Article 30, in case of disputes relating to the allocation of infrastructure capacity, a dispute resolution system shall be made available in order to resolve such disputes promptly. If this system is applied, a decision shall be reached within a time limit of 10 working days.	This requirement has been implemented by regulation 20(5) of the 2005 Regulations.	
22.1	Requires the infrastructure manager to declare an element of infrastructure congested if it has not been able to satisfy requests for infrastructure capacity on that element of infrastructure adequately.	This requirement has been implemented by regulation 23(1) and (2) of the 2005 Regulations.	Enforced by ORR.

Article	Objective	Implementation	Responsibility
22.2	Requires that when infrastructure has been declared congested the infrastructure manager shall complete a capacity analysis.	This requirement has been implemented by regulation 23(4) of the 2005 Regulations.	Enforced by ORR.
22.3	States that when charges in accordance with Article 7(4) have not been levied or have not achieved a satisfactory result and the infrastructure has been declared to be congested, the infrastructure manager may in addition employ priority criteria to allocate infrastructure capacity.	This requirement has been implemented by regulation 23(5) of the 2005 Regulations.	
22.4	States that the priority criteria shall take account of the importance of a service to society, relative to any other service which will consequently be excluded.	This requirement has been implemented by regulation 23(6)(a) of the 2005 Regulations.	
22.5	States that the importance of freight services and in particular international freight services shall be given adequate consideration in determining priority criteria.	This requirement has been implemented by regulation 23(6)(b) of the 2005 Regulations.	
22.6	States that the procedures which shall be followed and criteria used where infrastructure is congested shall be set out in the network statement.	This requirement has been implemented by regulation 11(4)(f)(viii) of the 2005 Regulations.	Enforced by ORR.
23.1	Requires the infrastructure manager to respond to ad hoc requests for individual train paths as quickly as possible, and in any event, within five working days. Information supplied on available spare capacity shall be made available to all applicants who may wish to use this capacity.	This requirement has been implemented by regulation 21(2) and (3) of the 2005 Regulations.	

Article	Objective	Implementation	Responsibility
23.2	Requires infrastructure managers where necessary to undertake an evaluation of the need for reserve capacity to be kept available within the final scheduled working timetable to enable them to respond rapidly to foreseeable ad hoc requests for capacity. This shall also apply in cases of congested infrastructure.	This requirement has been implemented by regulation 21(4) of the 2005 Regulations.	
24.1	States that without prejudice to paragraph 24.2, infrastructure capacity shall be considered to be available for the use of all types of service which conform to the characteristics necessary for operation on the train path.	This requirement has been implemented by regulation 22(1) of the 2005 Regulations.	
24.2	States that where there are suitable alternative routes, the infrastructure manager may, after consultation with interested parties, designate particular infrastructure for use by specified types of traffic. Without prejudice to Articles 81, 82 and 86 of the Treaty, when such designation has occurred, the infrastructure manager may give priority to this type of traffic when allocating infrastructure capacity. Such designation shall not prevent the use of such infrastructure by other types of traffic when capacity is available and when the rolling stock conforms to the technical characteristics necessary for operation on the line.	This requirement has been implemented by regulation 22(2) and (3) of the 2005 Regulations.	Enforced by ORR.
24.3	States that when infrastructure has been designated pursuant to paragraph 24.2, this shall be described in the network statement.	This requirement has been implemented by regulation 11(4)(f)(vii) of the 2005 Regulations.	Enforced by ORR.

Article	Objective	Implementation	Responsibility
25.1	Sets out the objectives of capacity analysis.	This requirement has been implemented by regulation 24(1) of the 2005 Regulations.	
25.2	States that the analysis shall consider the infrastructure, the operating procedures, the nature of the different services operating and the effect of all these factors on infrastructure capacity. Measures to be considered shall include re-routing of services, re-timing services, speed alterations and infrastructure improvements.	This requirement has been implemented by regulation 24(2) and (3) of the 2005 Regulations.	
25.3	States that a capacity analysis shall be completed within six months of the identification of infrastructure as congested.	This requirement has been implemented by regulation 24(5) of the 2005 Regulations.	
26.1	Requires the infrastructure manager to produce a capacity enhancement plan within six months of the completion of a capacity analysis.	This requirement has been implemented by regulation 25(1) of the 2005 Regulations.	Approval of additional public spending by Secretary of State or Scottish Ministers.
26.2	Sets out who the infrastructure manager should consult during the development of the capacity enhancement plan and what it should cover.	This requirement has been implemented by regulation 25(2) to (4) of the 2005 Regulations.	

Article	Objective	Implementation	Responsibility
26.3	<p>States that the infrastructure manager shall cease to levy any fees which are levied for the relevant infrastructure under Article 7(4) in cases where:</p> <p>a) he does not produce a capacity enhancement plan; or</p> <p>b) he does not make progress with the action plan identified in the capacity enhancement plan.</p> <p>However, the infrastructure manager may, subject to the approval of the regulatory body continue to levy those fees if:</p> <p>a) the capacity enhancement plan cannot be realised for reasons beyond his control; or</p> <p>b) the options available are not economically or financially viable.</p>	<p>This requirement has been implemented by regulation 25(5) and (6) of the 2005 Regulations.</p>	
27.1	<p>States that in particular for congested infrastructure the infrastructure manager shall require the surrender of a train path which, over a period of at least one month, has been used less than a threshold quota to be laid down in the network statement, unless this was due to non-economic reasons beyond the operator's control.</p>	<p>This requirement has been implemented by regulations 26(1) and (2) and 11(4)(xi) of the 2005 Regulations.</p>	
27.2	<p>States that an infrastructure manager may specify in the network statement conditions whereby it will take account of previous levels of utilisation of train paths in determining priorities for the allocation process.</p>	<p>This requirement has been implemented by regulations 26(3) and 11(4)(f)(xii) of the 2005 Regulations.</p>	

Article	Objective	Implementation	Responsibility
28.1	States that requests for infrastructure capacity to enable maintenance to be performed shall be submitted during the scheduling process.	This requirement has been implemented by regulation 19(5) of the 2005 Regulations.	
28.2	States that adequate account shall be taken by the infrastructure manager of the effect of infrastructure capacity reserved for scheduled track maintenance on applicants.	This requirement has been implemented by regulation 16(12) of the 2005 Regulations.	
29.1	States that in the event of disturbance to train movements caused by technical failure or accident the infrastructure manager must take all necessary steps to restore the normal situation. To that end he shall draw up a contingency plan listing the various public bodies to be informed in the event of serious incidents or serious disturbance to train movements.	This requirement has been implemented by regulation 27(1) and (2) of the 2005 Regulations.	
29.2	In an emergency and where absolutely necessary on account of a breakdown making the infrastructure temporarily unusable, the paths allocated may be withdrawn without warning for as long as is necessary to repair the system. The infrastructure manager may, if he deems it necessary, require railway undertakings to make available to him the resources which he feels are the most appropriate to restore the normal situation as soon as possible.	This requirement has been implemented by regulation 27(3) and (4) of the 2005 Regulations.	

Article	Objective	Implementation	Responsibility
29.3	States that Member States may require railway undertakings to be involved in assuring the enforcement and monitoring of their own compliance of the safety standards and rules.	Member States to decide whether this requirement is needed - not implemented.	
30.1	Requires member states to establish a regulatory body.	Regulations 28 and 29 confer the functions and responsibilities of the regulatory body on the ORR, which was established under section 15 of the Railways and Transport Safety Act 2003.	Through the 2005 Regulations, the Secretary of State for Transport has designated the ORR to be this body.
30.2 (as amended by article 30.2 of Directive 2004/49)	Provides an applicant with the right of appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or in any other way aggrieved.	This requirement has been implemented by regulation 29(1) and (2) of the 2005 Regulations.	
30.3	States that the regulatory body shall ensure that charges set by the infrastructure manager comply with chapter II and are non-discriminatory. Negotiation between applicants and an infrastructure manager concerning the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the regulatory body. The regulatory body shall intervene if negotiations are likely to contravene the requirements of this Directive.	This requirement has been implemented by regulation 28(2) to (4) of the 2005 Regulations.	ORR.
30.4	Provides the regulatory body the power to request relevant information from the infrastructure manager, applicants and any third party.	This requirement has been implemented by regulation 31 of the 2005 Regulations.	ORR.

Article	Objective	Implementation	Responsibility
30.5	Requires the regulatory body to decide on any complaints and take action to remedy the situation within a maximum period of two months from receipt of all information. Notwithstanding paragraph 6, a decision of the regulatory body shall be binding on all parties covered by that decision. In the event of an appeal against a refusal to grant infrastructure capacity, or against the terms of an offer of capacity, the regulatory body shall either confirm that no modification of the infrastructure manager's decision is required, or it shall require modification of that decision in accordance with directions specified by the regulatory body.	This requirement has been implemented by regulation 29(7), (10) and (11) of the 2005 Regulations.	ORR.
30.6	Member States shall take the measures necessary to ensure that decisions taken by the regulatory body are subject to judicial review.	No implementation through Regulations is needed.	
31	The national regulatory bodies shall exchange information about their work and decision-making principles and practice for the purpose of coordinating their decision-making principles across the Community. The Commission shall support them in this task.	No implementation through Regulations is needed.	
32 (as amended by article 30.3 of Directive 2004/49)	Safety Certification	This was deleted by 2004/49/EC. All railway undertakings are required to have a safety certificate under the Railways (Safety Case) Regulations 2000.	

Scrutiny History

First Rail Package

Scrutiny History of EC Document 11375/98, CPM(1998) 480 Final

The House of Commons European Scrutiny Committee considered EM 11375/98 (Ref 19442) on 4 November 1998 (Report 39 Session 97/98) and considered it politically important and asked for further information. The Minister wrote to the Chairman on 15 April 1999. The Committee considered the dossier politically important but cleared it on 21 April 1999 (Report 16 Session 98/99).

The House of Lords European Union Select Committee considered EM 11375/98 on 2 November and referred it to Sub-committee B (972nd sift). A letter was sent from the Chairman on 19 November 1998 requesting further information. Two of the three packages, development of Community's railways and licensing of railway undertakings were cleared by letter of 19 January 1999, but the final part on train path allocation maintained scrutiny reserve. The Chairman wrote to the Minister on 8 February 1999. The Minister replied to the Committee on 21 February 1999. The Minister wrote again on 15 April 1999 with a general update. The Chairman replied on 29 April 1999 retaining scrutiny reserve. The Minister wrote to the Committee on 24 May 1999 with an update. The Chairman replied on 10 June 1999 and cleared the EM.

Scrutiny History of EC Document 13417/99 + Adds 1, 2, & 3 COM 99 (616) Final

The Commission's amended proposal was the subject of EM 13417/99 + ADDs 1, 2 & 3. The House of Commons European Scrutiny Committee considered the EM on 19 January 2000 (report 5 session 99/00, reference 20794). The Committee recommended that the document was of political importance but cleared it. The House of Lords Select Committee on the European Union referred the EM to sub Committee B following the 1016th sift on 11 January 2000. The EM was cleared by letter of 27 January to the Minister.

Scrutiny history of Documents 11575/00, 11576/00 and 11577/00 Com (2000) 571 Final, Com (2000) 572 Final and Com (2000) 575 Final

The Commission's amendments to the package in the light of the European Parliament's second reading were the subject of the above EM covering all three documents.

The House of Commons Select Committee on European Scrutiny considered the EM on 4 November 2000 (report 29, session 99/00). The Committee recommended that the document was not legally or politically important. The House of Lords Select Committee on the European Union referred the EM to sub Committee B following the 1046th sift. The document was cleared by a letter to the Minister of 16 November 2000, which also asked for further information. That further information was supplied by a Ministerial letter of 29 November 2000.

The outcome of conciliation was reported to the Committees by a Ministerial letter of 12 December 2000.

Second Rail Package

Scrutiny history of Documents 5721/02, 5723/02, 5724/02, 5726/02, 5727/02 and 5744/02

The Explanatory Memorandum on the Commission's Second Railway Package (5721/02, 5723/02, 5724/02, 5726/02, 5727/02 and 5744/02) was submitted on 5 March 2002.

The House of Commons European Scrutiny Committee considered the EM at their meeting on 20 February 2002, found it to be of legal and political importance and recommended it for debate in Standing Committee A (Report 22 session 01/02, references 23192, 23202, 23193, 23194, 23195, and 23191). It was debated and cleared from scrutiny on 8 May 2002. The Minister wrote to the Chairman on 11 November 2002 and 11 March 2003 with an update on negotiations. The Chairman replied on 20 November 2002 and 19 March 2003 thanking the Minister for keeping the Committee informed. The Minister wrote to the Chairman on 25 November 2003 with an update following the European Parliament's Second Reading. The Chairman replied on 4 December 2003 thanking the Minister for the information. A further letter was sent on 24 March 2004 to inform the Committee of the outcome of conciliation.

The House of Lords Select Committee on the European Union referred the EM to sub Committee B on 19 March 2002 (1096th sift). The Chairman wrote to the Minister on 27 March 2002 requesting the results of the consultation. The Minister wrote to the Chairman on 17 October 2002 with an update on the 3 October Transport Council. The Chairman wrote to the Minister on 30 October 2002 asking for a detailed account of how negotiations were proceeding. The Minister replied to the Chairman's letter of 27 March on 11 November 2002 providing information on the consultation exercise. The Chairman wrote to the Minister on 4 December 2002 thanking him for the information provided and requested the Government's views on the points put forward by the SRA response to the package. The Minister wrote to the Chairman on 11 March 2003 with an update on developments in the European Council and European Parliament. In reply to the Minister's letter the Chairman wrote on 21 March 2003 lifting the scrutiny reserve on the document. The Minister wrote to the Chairman with a further update on 9 April 2003, which was considered by the Committee at its meeting on 12 May 2003. The Chairman replied to the Minister on 14 May 2003 thanking him for the update. The Minister subsequently wrote to the Chairman on 25 November 2003 with an update on the European Parliament's Second Reading. A further letter was sent on 24 March 2004 to inform the Committee of the outcome of conciliation.

Regulatory Impact Assessment

1. Title of proposed regulations

1.1. The Railway (Licensing of Railway Undertakings) Regulations 2005 and The Railways Infrastructure (Access and Management) Regulations 2005.

1.2. These Regulations will implement for Great Britain (GB) the European Union's (EU) First Railway Package of Directives ('First Rail Package'). The First Rail Package consists of:

- Directive 2001/12/EC, which amends Directive 91/440/EEC on the development of the Community's railways (Directive 91/440/EEC was originally implemented by the Railways Regulations 1992 and the Railway (Amendment) Regulations 1994. These were revoked by the Railways Regulations 1998 (S.I. 1998/1340 - the 1998 Regulations)).
- Directive 2001/13/EC, which amends Directive 95/18/EC (transposed for GB in the 1998 Regulations) on licensing of railway undertakings; and
- Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, which replaces Directive 95/19/EC (which was transposed in GB by the 1998 Regulations).

1.3. In addition, the 2005 Regulations implement Directive 2004/51/EC to open up all domestic infrastructure to freight.

1.4. Implementation will be separate for Northern Ireland. A separate assessment of the impact on Channel Tunnel is at Appendix A.

2. Purpose and intended effect

2.1. The objective is to extend the process of rail liberalisation already begun. The aim is to give statutory force to a range of measures intended to foster competition, transparency and equity in the rail market. These include improved access to infrastructure and transparency of the arrangements for this; separation between those bodies running trains and those managing infrastructure; licensing to be carried out by a body independent of rail companies; and an independent regulatory body to oversee capacity allocation and charging, and competition.

2.2. There is an additional objective of honouring the UK legal commitment to comply with EC Directives, and avoiding any further infraction proceedings, with the damage (whether financial or to the UK reputation) these might bring.

2.3. There should be little impact on rail users. Many of the Directives aims have already been implemented statutorily, and others have been achieved through administrative arrangements, though currently not underpinned by legislation. However, there are some groups that may be affected by the proposed regulatory changes. These include bodies that currently have sole access to, and/or ownership of existing rail infrastructure (for example the Channel Tunnel Rail Link - 'CTRL') or freight facilities (for example facilities at ports or terminals) that will have to face possible competition for access to such infrastructure or facilities. There will also be changes for those applying for licences to operate passenger or freight trains in GB, and consequential changes for those who already have such licences issued in GB. The intention is broadly that those currently exempted from licensing will remain so.

Background

2.4. The European Commission has been concerned about what it describes as a 'worrying decline' in rail transport over the last 30 years. Despite rail's ability to offer capacity, safety and environmental benefits, the railways are seen as less competitive than road haulage. Particular problems can occur due to the differences in the infrastructure for rail freight crossing international borders. Other delays can occur because passenger transport services are given priority over freight. The Commission's policy is to create conditions in which rail transport can be efficient and competitive, particularly for freight.

2.5. Against this background, earlier Directives have introduced liberalisation in some areas of rail (Directive 91/440/EEC); and common criteria for licensing of international services and rules on allocation of infrastructure capacity (95/18/EC and 95/19/EC). These directives have been implemented in the UK. The further proposals in the First Rail Package are intended to take the process further forward, and should have been implemented in March 2003. Key requirements include separation of functions to ensure service provision and capacity allocation cannot be done by a single body, and access to infrastructure and integral services. GB is already largely compliant with these requirements.

2.6. The reasons for delay in implementation were not due to rejection by the UK of any principles within the Directives but to external circumstances. Initially, there were delays due to the entry of Railtrack into administration in autumn 2001; in 2002-03 there was legislation affecting the GB rail regulator (now the Office of Rail Regulation - the ORR); and in January 2004, the Secretary of State announced a comprehensive review of the railways. The White Paper, *The Future of Rail*, was published in July 2004. Transposition of the Directives, which will now include the Second EU Rail Package amendment of Directive 91/440/EEC, has been taken into account in the legislative and non-legislative measures implementing the decisions of the rail review, including the Railways Act 2005. Transposition of the Directives has not proved straightforward, as it involves many complex additions to an already complicated regime, and it has taken time to arrive at sensible proposals which build on the existing GB system.

2.7. Apart from the UK's commitment to the purpose and effect of the Directives, there is now additional pressure following the adverse judgement handed down by the European Court of Justice in October 2004. The UK is seeking to implement the First Rail Package as quickly as possible in order to avoid any further adverse consequences of infraction proceedings, which could include a substantial fine. The hope is that the proposed implementation programme will be sufficient to convince the Commission that a fine would not improve the speed of implementation, and that no further incentives or sanctions are necessary to make the UK transpose the Directives.

3. Consultation

3.1. The Department has worked closely with the Office of Rail Regulation in developing the policy principles behind implementation and in drafting the transposition Regulations. Within Government the Department has consulted on the principle of implementation, especially in the collective agreement of the formal responses to the Commission following its adverse judgement. Parties consulted included: Cabinet Office; Department for Trade and Industry; Foreign and Commonwealth Office; HM Treasury; Health and Safety Executive; Home Office; Office of Fair Trading; Ministry of Defence; Strategic Rail Authority; and the devolved administrations.

3.2. The Department carried out a public consultation exercise on the draft Regulations. Due to the infraction proceedings being taken against the Government by the European Commission the consultation was only for six weeks to enable the Regulations to be laid before Parliament by the end of October. However, prior to consultation we had a positive

and productive dialogue with key industry stakeholders on the development of the Regulations and the policy on which they are based. These included London and Continental Railways, Eurostar, Association of Train Operating Companies, Rail Freight Group, Network Rail, Strategic Rail Authority, the ORR, English Welsh and Scottish Railways and Freightliner. We sent out over one hundred and seventy copies of the consultation paper. Twenty nine responses were received (including all of the key rail industry stakeholders). An analysis of the responses was completed and consultees views taken into consideration, a copy of the consultation report is available on the Department's website at www.dft.gov.uk.

3.3. In relation to the Railway (Licensing of Railway Undertakings) Regulations 2005 the main issues on which views were sought were:

- our proposal to have a European licence plus an associated SNRP;
- the payment of the annual levy to the ORR being attached to the European licence rather than the SNRP; and
- the transitional arrangements for holders of existing licences.

3.4. Respondents broadly supported the approach of having a European licence and an associated SNRP. Some concern was raised about what the ORR could include as a SNRP condition. The provision on 'SNRP conditions' is consistent with Article 12 of 95/18/EC, as amended, which allows Member States to apply national law and regulatory provisions in addition to the European licence requirements and specifies certain conditions that may be imposed. To provide the industry with assurance over what the ORR can include as a SNRP condition, the ORR must have regard to its section 4 duties under the 1993 Act when setting such conditions.

3.5. All those who commented on the annual levy to the ORR being attached to the European licence rather than the SNRP thought this would be problematic as it would be discriminatory against operators licensed in GB. Following further legal advice the Department is satisfied that it is lawful for the payment of the annual levy to be a condition of the SNRP and the Regulations have been amended accordingly.

3.6. With regards to the proposed transitional arrangements for railway undertakings that fall under the scope of the Railway (Licensing of Railway Undertakings) Regulations 2005 and are currently authorised to operate under the 1993 Act or the 1998 Regulations, nearly all those who responded to this question thought that the proposed transitional arrangements seemed appropriate. Concern was raised that licence holders with bespoke conditions should see these carried over into the new regime and the Regulations have been amended to allow this.

3.7. In relation to the Railways Infrastructure (Access and Management) Regulations 2005 the main issues on which views were sought were:

- the policy intention of opening up in principle access to services and facilities and the proposed scope of the draft regulations;
- whether the draft regulations afford the rights to apply for access as envisaged by the First Rail Package and access to training facilities;
- whether the draft regulations accurately reflected the processes and requirements of Directive 2001/14/EC relating to allocation of infrastructure capacity;
- whether the draft regulations fully captured the appeal rights afforded by article 30 of Directive 2001/14/EC; and

- the proposal to abolish the International Rail Regulator.

3.8. Most respondents broadly supported the Department's policy intention of opening up in principle access to services and facilities. However, nearly all respondents requested more clarity on the scope of the draft regulations. In light of this we have produced guidance, in consultation with key stakeholders, on the scope of both sets of Regulations which will be available on the Department's website when the Regulations come into force. We have also amended the scope of the Railways Infrastructure (Access and Management) Regulations 2005 to provide greater clarity.

3.9. Most respondents agreed that the draft regulations did afford the rights to apply for access as envisaged by the First Rail Package. However, concern was raised that the Regulations included a requirement from the Safety Directive (part of the Second Rail Package) on access to training facilities for train drivers. In light of the views received, and further legal advice, the provision providing access to training facilities for train drivers has been removed from the Regulations and will now be implemented at the same time the rest of the Safety Directive - expected later this year.

3.10. Those who commented on whether the draft regulations accurately reflected the processes and requirements of Directive 2001/14/EC relating to the allocation of infrastructure capacity broadly agreed that this was the case. A number of detailed comments were received on how the processes would work in practice and these have been taken into consideration in finalising the Regulations.

3.11. Most of the respondents who commented on whether the draft regulations fully captured the appeal rights afforded by article 30 of Directive 2001/14/EC agreed that this had been achieved. However, a couple of respondents pointed out that the draft regulations had failed to transpose Article 30(f) of Directive 2001/14/EC as amended by Article 30 of Directive 2004/49/EC, the Regulations have been amended accordingly.

3.12. The abolishment of the International Rail Regulator and the assignment of all of the regulatory functions arising from the First Rail Package Directives to the ORR was supported by all those who responded to the question.

3.13. Responses to the consultation exercise have informed the final Regulatory Impact Assessment.

4. Options

4.1. The options considered in this RIA are:

Option 1: Do nothing

4.2. In the absence of regulations to transpose the Directives, GB's existing railway system would continue as now. The main risk of not implementing the Directives would be primarily financial, not policy related. In broad policy terms, the competitive market would not suffer, as the GB regime is already largely liberalised, and compliant with the spirit of the Directives. But in some respects there might be barriers to competition which the Directives are intended to reduce; and there could be resulting inequalities for operators and managers in GB compared to elsewhere. In particular, the CTRL would be operating under a different regime from all other lines, with no statutory right of access for other undertakings, and no right of appeal over access or charges; there would be no right of access to services and to freight facilities at ports and terminals; and there would be uncertainty about the status of European licences granted outside the UK. So there could be those disadvantaged by the failure to implement and there could be the risk that they might take legal action to obtain access or

redress for the lack of its provision. However, because of the existing structure of the rail industry, the competitive disadvantages are likely to be relatively restricted in their effect.

4.3. The legal implications/risks of not implementing the Directives are serious and adverse. The UK is obliged to implement the Directives in full under the Treaty establishing the European Community. If the UK does not do so, the European Commission could force the UK to comply through the infraction and fines process. The European Court of Justice has already judged against the UK (see judgement of 7 October 2004, which confirms the view that the UK has either failed to transpose, or failed to confirm transposition), and the UK may now become liable for a fine. Although fines are not always levied in infraction proceedings, they can be severe, and may be charged on a daily rate. Based on the calculation of penalties set out in the Official Journal the UK Government could face fines of £367,187 per day following the passing of the European Court's second judgement until the UK notifies the Commission that transposition has been completed. There would also be an element of damage to the UK reputation as a result of non-compliance. Anything short of full implementation would not satisfy the Commission - in effect the Government and the rail industry have been attempting until now to deliver most of the requirements through a combination of existing legislation and additional voluntary arrangements, for example with Network Rail, as the Infrastructure Manager (IM) for the mainline network about the contents of the network code. The 'do nothing' option is not a realistic option, denying as it would the UK's legal obligations, and damaging the UK's reputation. It is not considered further here.

Option 2: Enhance and extend the role of the International Rail Regulator in line with the requirements of the Directive, but retain the distinction between the international traffic regime and that governing all other traffic, under the provisions of the Railways Act 1993.

4.4. Appendix B describes the role of the International Rail Regulator (IRR) in relation to international services and licences, and the difference from the domestic regime. The Government's view is that the existing domestic regulatory regime is broadly satisfactory. Although it goes beyond the requirements of the First Rail Package, it does not conflict with them, and the Government sees no reason to remove the degree of additional regulation that applies to the domestic market. Option 2 would amend the powers of the IRR in relation to international services to make the regime comply with the First Rail Package, but without imposing on undertakings on the CTRL the full range of controls which operate in the domestic market. In other respects the implementation would be as for option 3.

4.5. Under both options 2 and 3, changes will be required to the CTRL regulatory regime in the areas of licensing, handling competition, and dealing with charging and capacity allocation in line with the First Rail Package. It would be possible to increase the role of the IRR to ensure the IRR fulfils the role of allocation of capacity and charging for the use of infrastructure by international undertakings, as well as taking on appeals on a wider set of issues. The extension of the IRR role to include those ascribed to the regulatory body (Article 30 of 2001/14/EC) would generate further changes. It would probably require the creation of an organisation with a Board, to bring it into line with other regulated industries, rather than continuing to work with a statutorily appointed individual. A similar restructuring has already taken place for the ORR. This would mean structural change and the setting up of a separate body (whereas option 3 would allow the IRR work to be absorbed into the ORR).

4.6. Although this looks like a less complex solution to the licensing and appeal issues than the abolition of the IRR advocated in option 3, there are strong policy and better regulation reasons for abolishing the IRR. It is better regulation to have one broadly similar type of regulatory regime for licensing, capacity allocation and charging and competition issues applied to the whole rail network in GB. Two regulatory bodies for the mainline domestic

network and for the CTRL would increase bureaucracy and costs, and provide a less transparent and consistent system of regulation and approach. Implementing Directive 2004/51/EC and opening up access to the domestic freight market in the same set of Regulations will also end the distinction between domestic and international traffic, and consequently the need for two different types of regulatory approaches.

4.7. Implementation should be mainly low risk, as it will for the most part formalise the existing position. Article 10.6 of 91/440/EEC, as amended, requires non-discriminatory access to track to and services in terminals and ports linked to the provision of international services which serve, or could serve, more than one final customer. Following privatisation, many private freight facilities were exempted from the access regime, under an order made in 1994. Some freight facilities were exempted by type (i.e. they were not listed, and we do not necessarily know who or where they all are). These Regulations will open such facilities up to access, and provide for the ORR to act as an appeal body if the parties fail to agree on access or charges. There is an unquantified (because unknown) risk that some private owners might seek compensation for having to open their facilities to potential competitors, especially if the terms they were granted on transfer gave them exclusive rights over the facility. However, we cannot implement the Directives without giving this access, and would expect this to be low risk.

Option 3: Abolish the IRR, and extend the ORR's remit with respect to international traffic currently regulated under the 1998 Regulations and enhance the ORR's role in line with the requirements of the Directives.

4.8. The Government's preferred option - is to move as soon as possible to full implementation of the Directives in GB and to rationalise the regulatory bodies. This option would include abolition of the IRR and the extension of the powers of the ORR to all international services, including those on the CTRL, sufficient to secure compliance with the Directives.

4.9. Implementation should have limited practical impact on the rail industry, though some benefits should flow.

4.10. The requirements to provide access and transit rights to infrastructure, and to provide access to services, and to ports and terminals, should ensure transparent and equitable access for all possible users. This should help to maximise usage of the system - especially for freight - and to improve competition. This should be beneficial to undertakings wanting to compete. If there are additional costs to IMs or service providers, they should be able to charge users to reflect this. The ORR will have a role in ensuring that access is duly given where appropriate, and that the charges are reasonable. They will act as an appeal body for anyone aggrieved over access and charging decisions.

4.11. On the licensing side, the proposal is to abolish the IRR and have all licences issued by the ORR. New style passenger and freight operator licences will be called European licences, to reflect their transferability across Europe. As under the Railways Act 1993 ('the 1993 Act'), it will be a criminal offence to provide rail services without a European licence. (But some undertakings will be excluded from the scope of the new regime). European licences will be granted on the basis of an assessment of good repute, professional competence, financial fitness and cover for civil liabilities. As under the current arrangements, there will be an administrative charge for this European licence, and holders will be required to make an annual levy payment thereafter. There will be an on-going requirement to comply with the criteria for receiving a European licence for the whole period of its duration. Existing passenger and freight operator licences will initially be treated as if they were already European licences.

4.12. In addition to this, affected undertakings will need a statement of national regulatory provisions (SNRP) which will set out various required conditions for operation in GB, that are compatible with Community law and are non discriminatory and reflect the ORR's duties under section 4 of the 1993 Act. This statement will cover most matters currently dealt with as domestic licence conditions, such as requirements to comply with technical or safety rules or to enter into key industry arrangements. There will be no charge for this and it will be granted automatically to those applying to operate services here as long as they have a valid European licence, whether it was issued here or in another Member State. The enforcement and various other provisions of the 1993 Act will also apply to the conditions set down in these new statements.

5. Costs and benefits

Sectors and Groups affected

5.1. Those most likely to be affected by the Regulations are: train operators (railway undertakings under the terms of the Directives and the Regulations); infrastructure managers (Network Rail as the infrastructure manager for the mainline network and Union Railways North as the infrastructure manager for CTRL); port owners; rail terminal and facility owners; and certain providers of services to the rail industry whether or not currently regulated/licensed under the 1993 Act.

Benefits

5.2. We do not envisage any particular benefits accruing to voluntary organisations and charities; to the rural economy; or to employees as a group, given that the firms concerned are already operating largely in the way determined by the Directives, and the Directives have no direct impact on terms and conditions, health and safety. We predict no impact on health and diversity issues as a result of these proposals. Impact should be low on consumers, but might result in more choice of services or service provider, and/or lower prices. As the First Rail Package does not deal with passenger services, there should be no impact on rail passenger use, mileage or cost.

5.3. In the Public sector, there might be some streamlining of regulatory bodies (i.e. the collapse of the IRR into the ORR) but the result will be more transparency for the user, rather than savings in the public sector, as the IRR role is in practice conducted by the ORR staff. If the IRR role is to continue, additional costs may result from the need to establish it as a separate board rather than as an individual.

5.4. Economic impact should be minor, given the existing liberalised regime. However, there may be some companies that will now have greater rights to compete in the market. In addition, companies from elsewhere in the EU will be able to access the GB market (though in practice for most lines this is already possible). Moreover, the reciprocal nature of the Directives means that there may be access to freight markets abroad for GB firms.

5.5. There may be savings in time and certainly improved clarity from having one licensing body, which should make market entry easier for newcomers. If the ORR is responsible for the entire regulatory regime, it will be easier to ensure a consistent approach to similar issues.

5.6. There will be benefits to the UK from complying with the Directives - removal of the fine threat and compliance with legal obligations, with the consequential benefit to reputation.

5.7. Environmental benefits would normally flow from more use of rail freight if it reflected transfer from road, but in this case it is difficult to predict whether there will be any increase. Access to track is already largely available, and it is arguable how much will

change as a result of opening up previously unavailable facilities. In principle, better market operation might lead to more competition and reduced costs to customers. Those who responded to the consultation exercise agreed that opening up access to such facilities should have a positive effect.

Costs

5.8. Costs to firms in GB should be negligible, since so many of the provisions are already in force, but there may be minor cost implications for international undertakings as they may have to pay an increased contribution to the ORR's annual costs - which will be based on turnover, as it currently is for domestic operators - rather than paying for IRR time, as now. In addition there may be costs for those required to provide access to their facilities to other undertakings, although the access related charges are designed to allow them to recover these costs. There should be minimal impact on GB firms abroad, although their GB issued European licence will allow them to operate abroad.

5.9. We do not see why additional costs should fall on voluntary organisations and charities; employees; the rural economy; nor do we see any likely impact on health, or on race equality or other diversity issues.

5.10. Public sector: the ORR will have to take on some new and enhanced tasks. Its appeal role in relation to matters of access will extend to other services/facilities, not regulated under the 1993 Act, but many of them build on existing work, and the assumption is that the work will be accommodated within existing resources. Tasks will include managing an appeal right to the ORR and it will undertake a 'market monitoring' role under Article 10(7) of Directive 91/440/EEC, as amended, requiring the ORR to have additional powers to gather information. Additionally there may be some marginal costs associated with ensuring that the licensing system is compliant with the Directives, particularly to enable immediate transition - compared to the do nothing option. There will be minimal offsetting savings from abolishing the IRR. There is a possible financial risk/unintended consequence to the ORR if UK firms decide to get their European licences abroad, rather than from the ORR - this could reduce the ORR income stream and increase their need for public money, but equally may increase the incentive for the ORR to keep costs low.

5.11. Private sector: Network Rail will be taking on some additional tasks, in carrying out the responsibilities of the IM for the mainline network. However, we do not expect significant additional costs, since they, like the ORR, have been anticipating implementation, and have already undertaken much of the preliminary work, (for example timetabling, processes, production of network statement etc). In its consultation response Network Rail agreed that on the whole the impact on Network Rail should generally be minimal, except as regards additional costs related to developing and maintaining the network statement and the undertaking of analyses and plans for congested infrastructure. Union Railways North and CTRL UK who responded as the IM for the CTRL commented that although the changes to CTRL are not minimal, in reality they did not believe that they will have a major impact on their business.

5.12. As the open access provisions will be applied to privately owned freight infrastructure and to services and facilities at ports and terminals, there may be costs to the owners/providers of such facilities and services as they will now be obliged to make them available on request to others, insofar as required by the Directives. However, they will be able to charge for use, including covering increased maintenance costs.

5.13. We have not identified any environmental or social costs.

6. Small Firms Impact Test

6.1. We have considered the proposals in the light of possible impact on small firms (defined as those with fewer than 250 full time equivalent employees). Few licensed train or freight operating companies fall in this category other than subsidiaries of much larger companies (for example the rail freight subsidiaries of British Nuclear Fuel and of First Group). As the majority of the network is already open to access, there should be no significant impact on any undertakings. There is a possibility that the opening up of services and facilities at ports and terminals may affect small companies of whom we are unaware (for example, if they were exempted by class from the access provisions of the 1993 Act because they were not at the time operated by British Rail).

7. Competition assessment

7.1. The Regulations will primarily affect train operators (especially freight operators), including those from other Member States, IMs, port owners, rail terminal and facility owners and providers of services.

7.2. The passenger train operating sector is characterised by competition across an international field (of owning groups), although there are currently only nine firms operating passenger services in the GB. The GB freight market is primarily served by the road haulage sector, with rail freight accounting for only 7.4% of total tonne kms moved (Strategic Rail Authority, 2002). The GB rail freight market is dominated by a few large firms, with a number of small, but growing peripheral firms.

7.3. The Directives apply to all EU Member States and therefore should not affect the relative position of companies in comparable businesses within the EU, and should not put the UK rail industry at a competitive disadvantage. They will apply equally to all railway undertakings in GB. They are intended to increase competition by requiring facilities, services and infrastructure to be made available to applicants on a transparent and equitable basis, and providing an independent regulatory body to deal with appeals and complaints.

7.4. There are some sections of infrastructure, such as private freight facilities, which are currently in sole use by one party. The Regulations will introduce competition into these areas by providing for an access regime which will ensure that all sections of the network are supervised by a competition body the ORR. This may pose an additional burden on the current sole user, though this should be compensated for through additional charges. The liberalisation of the CTRL may also have an impact on cross-channel road/sea haulage and passenger firms and although the magnitude of this effect is unknown, it is believed to be marginal. Network Rail will act as the IM for all track access and charging issues relating to the mainline network, and there will be a right of appeal to the ORR in the event of a complaint about how Network Rail has exercised any of its duties.

8. Enforcement, sanctions and monitoring

8.1. It will be a criminal offence to operate without a European licence (unless exempted from the scope of the licensing requirements) and SNRP; and to give false information in relation to either. This will be enforced by the ORR and will be punishable with a fine, mirroring existing arrangements. It is already an offence to operate without a licence so it should not result in additional work for the ORR or for the Courts. Most of the other provisions will be monitored and enforced by the ORR, following on from the role they already play in the regulation of the domestic network. Enforcement arrangements broadly compatible with existing arrangements will apply to the provisions on access and management.

8.2. Network Rail, as the IM for the mainline network, and the ORR will play key roles in observing and reporting on the implementation of the Directives. The ORR has a market monitoring role and will be able to receive information on the state of the rail market such as changes in the number of European licence applicants/holders including those holding licences granted by other Member States, and to record numbers of appeals to them for specified reasons. This should give us information on the extent to which the Directives have made an impact on the rail market.

8.3. The Department will be monitoring these results, as will the Commission, as they will be concerned to check that full implementation has been achieved after such a long delay.

9. Implementation and delivery plan

9.1. Given the lateness of transposition and the ongoing infraction proceedings against the UK Government, with the imminent threat of fines, it has not possible to allow for the standard twelve week implementation period. Subject to Parliamentary scrutiny procedures, it is our intention that both sets of Regulations will come into force twenty one days after they have been laid before Parliament. We will inform all those stakeholders who responded to the consultation exercise when the Regulations have been laid, and from where they can obtain a copy of the Regulations. As set out in the section on 'Consultation' we have met with all of the key industry stakeholders to explain how the Regulations will affect them.

9.2. Directive 91/440/EEC, as amended, and Directive 2001/14/EC, as amended, do not provide any transitional periods for implementation. Directive 95/18/EC, as amended, does provide for a transitional period of twelve months, but given the lateness of our transposition we have not been able to use this transitional period. Thus, the Licensing Regulations do not include a transitional period. Instead, rather than having to apply for a new European licence, railway undertakings, which fall under the scope of the Licensing Regulations, and that are currently authorised to operate under the 1993 Act or the 1998 Regulations, will be deemed to hold a European licence and to have been granted a Statement of National Regulatory Provisions. To aid transition the ORR has published on its website the standard templates for a European licence and a SNRP for both passenger and freight railway undertakings so that they can ascertain what changes will be made to their existing licences. The ORR will also amend its existing licensing guidance to reflect the detail of the new regime.

9.3. To provide industry with greater certainty over whether they are caught by the Regulations the Department is producing guidance on the scope of both sets of the Regulations, in consultation with key external stakeholders. This will be available on the Department's website at www.dft.gov.uk when the Regulations come into force. In addition the ORR is producing guidance on "viable market alternatives" and the type of factors it will take into account when determining appeals made under the Regulations. This will be available on the ORR's website www.rail-reg.gov.uk when the Regulations come into force.

9.4. As set out earlier, the Access and Management Regulations mostly formalise existing practices. However, the Regulations open up access to a number of private freight facilities that were exempted, following privatisation, from the 1993 Act access regime under an Order made in 1994. Some freight facilities were exempted by type (i.e. they were not listed, and we do not necessarily know who or where they all are). There could be an unquantified (because unknown) risk that some private owners might seek compensation for having to open their facilities to potential competitors, especially if the terms they were granted on transfer gave them exclusive rights over the facility.

9.5. Applicants wanting access to track, terminals, ports, and services covered by the Access and Management Regulations will be able to look at the relevant infrastructure

manager's network statement, which must include information on: the nature of the railway infrastructure available to applicants and the conditions of access to it; details as to where further information may be obtained about gaining access to any of the terminals and ports and service facilities covered by the Regulations; a description of the charging principles; and a description of the principles and criteria for the allocation of infrastructure capacity.

9.6. Network Rail, as the IM for the mainline network; Union Railways North, as the IM for the CTRL; and the ORR, as the regulatory body and licensing authority, will play key roles in observing and reporting on the implementation of the Directives. In terms of ensuring successful delivery, both sets of Regulations contain effective enforcement mechanisms to ensure compliance. For example, under the Access and Management Regulations when an applicant believes that it has been unfairly treated, discriminated against or is in any other way aggrieved it can make an appeal to the ORR, as the regulatory body. Particularly against decisions adopted by the infrastructure manager, a service provider, or a railway undertaking, concerning matters related to the network statement; the allocation process; the charging scheme and charging system; the level or structure of infrastructure fees, and the arrangements in connection with the entitlements to access granted under the Regulations. This means that bodies must implement the relevant requirements of the Regulations correctly or face the possibility of an appeal being made to the ORR.

10. Post-implementation review

10.1. A planned review of the Regulations will take place within the three year time limit specified by Cabinet Office guidelines. However, a review of the Regulations may take place earlier if we receive substantiated evidence from industry stakeholders that the Regulations are not meeting their intended purposes or if they have created any unforeseen unintended consequences. The ORR, as the regulatory body and the licensing authority, will have an important role in identifying whether a review is needed. The purposes of the Regulations are to:

- encourage the development of the rail freight market through enhanced access to a wide range of freight commercial and operational facilities;
- ensure that the railway is clearly separated from the state;
- ensure that the activities of the railway are separated between infrastructure and the operation of passenger and freight services;
- ensure that the infrastructure is publicly regulated to prevent abuse of its natural monopoly and to make it easier for new entrants to enter the market; and
- ensure that railway undertakings are licensed to meet minimum standards of good repute, financial fitness, professional competence and cover for civil liability

10.2. A sunset clause is not appropriate in this instance as the Regulations implement EU Directives and the obligations that they create are intended to be ongoing.

11. Summary and Recommendation

11.1. Based on the analysis of benefits and costs and option delivery risks above and the consultation responses received, we recommend that Option 3 is adopted and that the two sets of Regulations are laid before Parliament. This should stop the infraction proceedings being taken by the European Commission and prevent any associated fines or damage to the UK's reputation; and is in line with the principles of better regulation, with the abolishment of the IRR so that only one regulatory body exists (the ORR).

Option	Total cost per annum Economic, environmental, social	Total benefit per annum Economic, environmental, social
1	Not possible to accurately calculate costs per annum - but potential fine of £367,187 per day following the passing of the European Court's second judgement until the UK notifies the Commission that transposition has been completed.	Minimal - not possible to accurately quantify.
2	Minimal - not possible to accurately quantify.	Minimal - not possible to accurately quantify.
3	Minimal - not possible to accurately quantify.	Minimal - not possible to accurately quantify.

12. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed

Date 1st November 2005.

**Derek Twigg
Parliamentary Under Secretary of State
Department for Transport**

Contact point

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Appendix A: Channel Tunnel considerations

1.1 The Channel Tunnel is subject to a discrete regulatory regime overseen by the Anglo-French Channel Tunnel Intergovernmental Commission in accordance with the Treaty of Canterbury 1986 and the Channel Tunnel Act 1987. It is intended to use this regime in order to ensure that the provisions of the First Rail Package are applied in a consistent and coherent manner in both France and the UK.

1.2 The Channel Tunnel Intergovernmental Commission has been preparing a Binational Regulation to transpose the First Rail Package to the Channel Tunnel. The content reflects the particular nature of the Tunnel and its operations, which are excluded from the scope of the First Rail Package. This is nearly complete.

Purpose and intended effect of measure

1.3 The objective of the Binational Regulation will be to extend to the Channel Tunnel those provisions of the First Rail Package that are relevant - essentially those relating to Eurotunnel's responsibilities as infrastructure manager, and the rights and obligations on railway undertakings operating or seeking to operate through the Tunnel. Certain of the provisions covered in the domestic Regulations are not relevant in this context. For example, Eurotunnel does not currently operate as a licensed railway undertaking; as such it is not presently obliged to implement the requirement of the First Rail Package regarding the separation of infrastructure management and transport.

1.4 There should be little impact on Channel Tunnel operators or on rail users. In the Department's view the Usage Contract between Eurotunnel and the network operators is deemed to constitute a 'framework agreement' for the purposes of the Directive; while there may need to be some adjustments to the detail of the Contract to ensure its full compliance with the provisions of Directive 2001/14/EC, any such adjustments will be for discussion between the parties and are not regulated by the Governments. In many ways, Eurotunnel as the infrastructure manager for the Channel Tunnel has already been taking steps to ensure its compliance with the requirements of the Directive; for example, it has drawn up and published a network statement setting out the basis on which other operators may have access to the infrastructure.

Risk Assessment

1.5 The main risk of not applying the Directives to the Channel Tunnel would be financial, since it is difficult to imagine that the European Commission would view any transposition that excluded the UK's sole rail link to Continental Europe as sufficient to drop its current infraction proceedings.

1.6 The UK view is that the potential clarification of the rights for third parties to use the Tunnel could generate more and create a potential additional revenue stream for the company.

Options

1.7 The principle options available to the Government are: a) omit the Channel Tunnel from the scope of the current transposition altogether; b) transpose to the Channel Tunnel by means of a Binational Regulation.

Option a) - omit the Channel Tunnel from the scope

1.8 This option would have little effect on current operations. The position would remain as it currently is: the existing railway undertakings would operate through the Tunnel in accordance with the Rail Usage Contract. New entrants would have the right to apply to Eurotunnel for capacity. However, those new entrants would have no statutory rights of appeal against any decision by Eurotunnel to refuse entry, or against Eurotunnel's scales of

charges. They might seek to appeal to the regulatory body established for the main British network, but that body has no authority in the Tunnel.

1.9 The omission of the Channel Tunnel from the scope of the transposition would also be immediately and rightly queried by the European Commission, which would be unlikely to drop its infraction suit against the UK while this important element of the Trans-European High Speed Rail Network was not brought into compliance.

1.10 In our view this option also places additional risk on Eurotunnel. If the Channel Tunnel is omitted from the scope of the transposition, this will give rise to suspicion that access is being reserved to the existing incumbents.

Option b) - transpose by reference to the Binational Regulation

1.11 Including the Channel Tunnel in the transposition reduces the risk that the European Commission would consider our implementation to be incomplete.

Benefits

1.12 The principal benefit from transposition to the Channel Tunnel will be the removal of the threat of fines arising from the current position of non-compliance. To date, there has been little interest from third parties in using the Channel Tunnel, although increasing liberalisation of the international freight market across EU Member States is likely to lead to new propositions emerging. The timescales governing third party requests for access to the Channel Tunnel are difficult to assess. However, in the long term, transposition will be helpful to prospective new market entrants. If third parties were to approach Eurotunnel for access and were denied, Eurotunnel would undoubtedly point them towards the Channel Tunnel Intergovernmental Commission as the appeal body. The Intergovernmental Commission would equally undoubtedly consider itself bound to act in accordance with the requirements of the Directive. However, the absence of statutory provisions would mean that if the appellant were still unsatisfied, his recourse to review of the Intergovernmental Commission's decision would be unclarified.

Costs

1.13 We do not anticipate any regulatory costs to industry from the transposition to the Channel Tunnel. In the public sector there may be some additional tasks falling to the Channel Tunnel Intergovernmental Commission from its expanded regulatory role, but the payments already made by Eurotunnel under the terms of the Channel Tunnel Concession Agreement to cover the expenses of the Channel Tunnel Intergovernmental Commission and Safety Authority should be adequate to absorb the cost of those additional tasks.

Equity and Fairness

1.14 Although implementation of the Directives will underpin a level playing field for all undertakings operating through the Channel Tunnel, in practical terms the benefit will be limited.

Consultation with Small Business: The Small Firms' Impact Test

1.15 The market affected by this proposal is currently operated solely by Eurostar/SNCF/SNCB for rail passenger services, and EWSI/SNCF for rail freight services. The proposal will clarify the rights of access and the charging structure for new entrants to the market and will ensure that those access rights and charging structures are equitable. It will also provide an independent regulatory body to deal with appeals and complaints.

Enforcement and Sanctions

1.16 The Binational Regulation will not create any criminal offences as these will necessarily arise from domestic legislation. The Regulations transposing these Directives to the domestic network will create a criminal offence of operating without a European licence. Since any undertaking seeking to access the Channel Tunnel must necessarily use the national network either on ingress or at egress, there is no need for a specific provision of this nature for the Channel Tunnel per se.

1.17 Most of the other provisions will be monitored and enforced by the Channel Tunnel Intergovernmental Commission as part of its ongoing role as regulatory/supervisory authority.

Monitoring and Review

1.18 This will be the responsibility of the Channel Tunnel Intergovernmental Commission.

Consultation

1.19 Consultation on the application to the Channel Tunnel was undertaken as part of the wider GB consultation exercise, since the interested parties are a subsection of the same. The consultation paper asked consultees for their comments on the Government's plans to transpose the First Rail Package to the Channel Tunnel by means of a Binational Regulation of the Channel Tunnel Intergovernmental Commission, given effect in the UK by an enabling Statutory Instrument. Of the twenty nine respondents only four provided comments in response to this question. All were supportive of the Government's plans to pursue implementation through a Binational Regulation with the French Government.

Summary and recommendation

1.20. Based on the analysis of benefits and costs and option delivery risks above and the consultation responses received Option b is recommended.

Appendix B: The International Rail Regulator and Channel Tunnel Rail Link

1. The current responsibilities and functions of the IRR are established under the 1998 Regulations which transposed Directives 91/440/EEC, 95/18/EC and 95/19/EC into domestic law. The primary aim of these three Directives was to open up access to the EU rail market for certain classes of international traffic, including certain freight services. The functions of the IRR under the 1998 Regulations are to act as:
 - an appeal body for capacity allocation and charging; and
 - a licensing authority for issuing international licences.
2. Section 18 of the 1993 Act (contracts requiring the approval of the Regulator) specifically does not apply to international access agreements, and the 1998 Regulations contain no power for the IRR to approve access contracts in advance. So neither the ORR nor the IRR carry out such a function in relation to international access agreements. Similarly, the IRR has no power to issue financial penalties for a breach of international licences. The IRR has no competition power: the competition authority for the CTRL is the Office of Fair Trading (OFT) rather than the ORR - (see section 22 of the Channel Tunnel Rail Link Act 1996 - 'the 1996 Act'), whereas the ORR has concurrent powers with the OFT for the domestic railway market and for international services other than on the CTRL.
3. The post of IRR is currently held by the Chairman of the ORR. To date the IRR has issued two international licences (to Eurostar UK and English Welsh and Scottish Railways International). The IRR has not dealt with any appeals in relation to capacity allocation and charging. There is no dedicated resource for the IRR and support for this work is provided by the ORR staff on an ad-hoc basis.
4. The 1996 Act specifically disapplies many of the powers of the ORR in respect of the CTRL. In particular, the ORR has no power to direct the IM to enter into access contracts for the use of the facilities; the power under section 18 of the 1993 Act for the approval of access contracts is also disapplied. The ORR has no role in respect of the framework for the setting of access charges, nor in monitoring the allocation of infrastructure capacity through the approval of access contracts. The competition powers which, under section 67 of the 1993 Act, the ORR holds concurrently with the OFT, do not apply to the CTRL.
5. Although virtually all the regulatory powers in the 1993 Act are disapplied by the 1996 Act, the 1998 Regulations do apply to services operated by international groupings and railway undertakings operating international combined transport good services on the CTRL. This means that such operators have rights to apply for access to the CTRL and, if such an application is refused, they can lodge an appeal with the IRR. The IRR is also the licensing body for international undertakings operating on the CTRL. The general provisions in the 1998 Regulations in respect of the separation of accounts and the calculation and determination of fees also apply to the CTRL.

Future of IRR

6. There is no specific requirement in the First Rail Package to abolish the IRR and there could be an argument that to do so would be 'gold plating' transposition of the First Rail Package. However, we will need to strengthen the role of the IRR and the net effect of this would be to give it roles similar to those already ascribed to the ORR. Whether we pursue the option of transferring the functions of the IRR to the ORR, or the alternative of strengthening the existing IRR, we will be required to implement changes in the CTRL's regulatory regime in the areas of licensing, handling competition issues, and dealing with charging and capacity allocation in line with the requirements of the First Rail Package.

7. Nevertheless, there are strong policy and better regulation reasons for abolishing the IRR. We take the view that the current functions carried out by the IRR under the 1998 Regulations should be given to the ORR, and also that the other regulatory functions entailed by the First Rail Package in respect of the CTRL should be carried out by the ORR.
8. The prime policy consideration here is that it makes for better regulation to have one broadly similar type of regulatory regime for licensing, capacity allocation and charging and for competition issues applied to the whole railway in GB. One regulatory body for the mainline domestic network and the CTRL would reduce bureaucracy and provide for a more transparent and consistent system of regulation and approach. Implementing Directive 2004/51/EC and opening up access to the domestic freight market in the same set of Regulations will also end the distinction between domestic and international freight traffic and consequently the need for two different types of regulatory approaches. It would also prepare the way for simpler implementation of any further liberalisation measures applying to the rail market arising from future European Directives.
9. The relevant current contracts in place under the CTRL Development Agreement will provide the charging framework for the CTRL. However, the detailed working of the charging system for the CTRL will be different from the mainline network. The IM for the CTRL will have more scope in setting the detailed costs (both fixed and operational) without the detailed level of scrutiny employed by the ORR. But the ORR will be able to deal with appeals in relation to access requests and prices in relation to the CTRL.