Rail Safety Review

Executive Summary Report

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1. Introduction

1.1. About this report

This report summarises the findings and recommendations of the Rail Safety Review, which was conducted over three phases.

1.2. Background

The Department for Infrastructure ('the Department') acts as Rail Safety Authority (RSA) for Northern Ireland and is responsible for ensuring compliance with the rail safety and interoperability regulatory framework. The Department does this in accordance with the Railway Safety Act (Northern Ireland) 2002 and associated regulations. The statutory functions of the RSA in the Department are exercised by Rail Safety Branch.

Over the last 25+ years, policy with regards to rail safety and interoperability of the rail system has largely been developed in the context of membership of the EU. Broadly speaking, the EU developed policy to encourage and develop an integrated rail network across the EU. This focussed on establishing common technical standards for rolling stock, infrastructure and railway systems, as well as standardising the approach to safety through licensing, certification and authorisations.

In Northern Ireland, this has largely meant that the Department focussed on implementing EU policy through transposing directives within devolved competence, essentially playing a mostly legislative role. For the operation of EU legislation, the Department relied on GB organisations (such as the Office for Road and Rail, ORR) to provide regulatory compliance checking in NI.

During the preparations for EU Exit, it became increasingly clear that the existing policy, legislative and operational arrangements for rail safety and interoperability could benefit from a formal review to ensure these arrangements are fit for purpose and enable the Department to address the two key challenges in this area going forward.

The first key challenge was a result of policy responsibility for safety and interoperability returning to the UK, with safety returning to the Assembly as it falls within devolved competence, as a result of EU Exit. Since Exit, the Department no longer has to transpose EU legislation and ensure that it operates effectively, rather the Department now has to develop rail safety policy for Northern Ireland without reference to a wider framework. Unfortunately, there is limited experience of

independently developing rail safety policy within Northern Ireland neither in the Department nor among industry stakeholders.

This is made more complex as a result of growing divergence between NI and GB and also between NI and the EU since EU Exit. There has been divergence between NI and GB following the UK Government's decision to revoke a range of railways EU legislation that came into effect post the 2016 referendum. This suite of EU legislation was left in place in Northern Ireland. As a result, there are different legislative requirements around railway safety. Equally, there has also been divergence between NI and the EU in this area. Prior to Exit, there were a number of changes made to the broad regulatory framework for railway safety in an EU directive that was not transposed following the decision of a previous Minister not to proceed with legislation. Further, there are ongoing changes to the EU regulatory framework for rail safety which will require policy consideration to examine whether NI should align or not, particularly in relation to the impact on cross-border services.

The growing divergence between NI and GB makes it more difficult to draw on existing support mechanisms in the rail safety sphere (e.g. ORR support for safety certification or regulatory compliance checking). Consequently, The Department has been developing its ability to oversee and undertake those activities (such as regulatory compliance checking) where we have relied on GB organisations in the past.

The second key challenge in relation to EU Exit is around implementing Windsor Framework obligations to apply European Technical Specifications for Interoperability (TSIs) on the NI Network in contrast to GB where the UK Government has moved to National Technical Specification Notices (NTSNs). The technical specifications form the technical requirements which new, and upgraded, infrastructure and rolling stock must comply in order to be authorised into service.

While GB NTSNs were aligned to EU TSIs at the point of Exit, the EU updated their TSIs in 2023 and the UK Government updated their NTSNs in 2025 resulting in growing divergence in the required technical specifications for interoperable railway components. In the main it is still possible for manufacturers of railway components to comply with both GB and EU standards. However, the divergence does mean that there are a small number of instances where railway components meet the GB standards but no EU standards and therefore cannot be deployed on cross-border vehicles. In the main, the divergence has affected railway components on freight wagons and GB rail operations systems. As such, the practical effects are limited.

At present, there are limited practical impacts of the divergence between GB and the EU, however the GB approach to technical specifications is significantly different from the EU approach which has the potential to result in increasingly complex effects in future. As a result of these changes more of the regulatory responsibilities regarding TSIs are now discharged locally rather than on a UK wide basis. Although

some of the operational responsibilities for interoperability had been delegated to the Department previously, they were mainly administrative and not significantly onerous, and the Department could rely on the support and assistance of ORR and the Rail Safety Standards Board. This is challenging going forward given Windsor Framework commitments and the growing potential for divergence between NI and GB in future making it more complex to avail of support and assistance from GB organisations, particularly as they become more focussed on the GB technical specification regime. In addition, more technical responsibilities have been devolved to the Department and there are concerns regarding how NI interests are represented to the EU.

Overall, the Department faces a much more complex policy, legislative, regulatory and operational environment for rail safety and interoperability. The additional and sometimes new responsibilities make this particularly challenging and clarify the importance to be 'fit for purpose'. It is against this background that the aims and objectives of the review were identified.

1.3. Aims and Objectives of the Rail Safety Review

The overall objectives of the review are focussed on the functions, processes and structure of the RSA role to ensure that it is fit for purpose moving forward and that the Department can effectively deliver on its statutory duty to licence and regulate safety and interoperability on the Northern Ireland rail network.

In particular, the objectives of the review are:

- To review the role/ remit of the RSA to ensure the Department is fulfilling its statutory and other responsibilities in the post EU Exit environment;
- To review the organisational structures, processes and systems to ensure the Department's approach to rail safety and interoperability is appropriately configured to deliver its legislative, policy and operational responsibilities; and
- To review the Department's approach to resourcing and financing rail safety and interoperability regulation to reflect best practice and the lessons which can be learned from other jurisdictions.

2. Methodology

2.1. Overview

In order to meet the three primary objectives of the review, it was considered necessary to conduct the review in three phases. Given the challenges set out above in relation to EU Exit and new, extended or additional responsibilities, especially in terms of reserved legislation the Department was not as familiar with compared to legislation made in the Assembly, it was felt a legislative review would be a necessary first step in clarifying our statutory duties and the scope of the role and remit of Rail Safety Branch. It was considered helpful to follow the legislative review with a desk-based case study of rail safety regulation in other jurisdictions as well as looking at how Northern Ireland regulators in other fields are organised. The review concluded with stakeholder engagement through 1-2-1 or small group interviews to gather their views on potential options for organising rail regulation in Northern Ireland.

2.2. Phase 1 – Legislative Review

The Phase 1 legislative review is an extensive review of the extant rail safety legislation applying to Northern Ireland and helps clarify the role/ remit of the RSA. This is benchmarked against GB legislation to identify possible gaps in NI rail safety legislation which impact on the efficient and effective delivery of the RSA function.

The legislative review was conducted between November 2021 and concluded in July 2022 and included a scan of the extant literature and consideration against review inclusion/ exclusion criteria; a review of each individual piece of legislation meeting the inclusion criteria; and finally, an examination of similar GB legislation to identify any gaps in NI legislation.

2.3. Phase 2 -Desk Based Case Study Review

The Phase 2 desk-based case study review is an in-depth review of rail safety regulation in other jurisdictions and NI based regulators in different fields focusing on the organisational structures, processes and systems of regulators; how legislative, policy and operational responsibilities are allocated; and the approaches taken to resourcing and financing regulatory activity.

The desk-based case study review was conducted between August 2022 and June 2023. The review commenced with a shortlisting process to identify potentially suitable regulators to include as a case study. Once suitable case study organisations were identified a data extraction tool was developed to ensure the

review obtained the necessary information in a consistent format. On completion of the data collection stage of Phase 2, the data was subject to extraction from the data extraction tool, it was then consolidated and analysed thematically. This provided key insights on how other jurisdictions approach rail regulation and how NI regulators in other fields are organised, funded and how they deliver the regulatory function.

2.4. Phase 3 -Stakeholder Engagement Methods

The Phase 3 stakeholder engagement was a series of semi-structured one-to-one and small group interviews with representatives from across the rail sector in Northern Ireland, as well as potentially interested parties in GB and Ireland.

The Phase 3 Stakeholder Engagement interviews were conducted between October 2023 and January 2024 and focussed on those areas highlighted in Phases 1 and 2 of the review, as well as the broader issue of how regulation happens in the Northern Ireland railway sector. Given the breadth of stakeholders participating and their external location to this jurisdiction some interviews were more focussed on learning from others' experiences while those interviews with local NI stakeholders were more focussed on their views on how the sector should be regulated in the future.

Once the interviews took place, they were transcribed to pick out the key points against each of the main issues in the question set as well as any specific points not previously covered. Subsequently the data was then consolidated and analysed thematically to provide insights on key issues including how the rail regulatory function should be organised, powers of the regulator, and how regulation is funded.

3. Summary of Phase 1, 2 & 3 of the Rail Safety Review

3.1 Summary from Phase 1 legislative review

The Phase 1 legislative review has an extensive review of the extant legislation applicable in NI and highlighted three key roles for Rail Safety Branch. Firstly, as 'National Safety Authority' for rail safety matters; secondly, as 'Competent Authority' for technical standards; and thirdly, as 'Competent Authority' for regulating the train driving professions. It should be noted that Rail Safety Branch is responsible for policy, legislation (except reserved matters on interoperability), operational delivery and regulatory compliance and/ or enforcement across these three key roles. In GB, Ireland and much of the EU these roles are split between policy and legislation (Government Department) and operational delivery and regulatory compliance (Independent Regulator). Nevertheless, the role and remit of Rail Safety Branch to deliver these statutory duties is set out in Table 1 below.

Overview of statutory rail regulatory duties

Table 1: Overview of the statutory duties of Rail Safety Branch		
National Safety Authority	*Competent Authority for Interoperability*	*Competent Authority for Train Driver licensing*
Licensing, Certifying and Authorising Railway Undertakings	Authorising new infrastructure or rolling stock to be placed in service	Issuing licences to qualified train drivers and overseeing the process for certifying drivers for the network
Supervising and Monitoring the delivery of the management system	Maintaining Registers of new or ongoing projects for authorisation	Maintaining a register of train drivers and sharing with other regulators on request
Railway Construction and operational restrictions	Issuing exemptions or derogations from applying technical specifications	Setting the standards and overseeing the delivery for the training and examination of train drivers
Systems to be deployed on trains and the network	Setting and enforcing standards regarding interaction of the railway with waterways	Approving doctors and psychologists to undertake medical and psychometric examinations of train drivers
Appointment of Inspectors and regulatory enforcement	Working with HSENI to enforce interoperability regulations	Publishing registers of trainers, examiners, doctors and psychologists approved for the train driving profession

Overseeing the implementation of recommendations following an incident/ accident		Undertaking compliance checking (and enforcement) to ensure standards are met in regards to the training of train drivers.

The information in Table 1 represents a broad overview of the role and remit across the three main functions of the Rail Safety Branch. At the point of EU Exit in January 2021 Rail Safety Branch was small, under resourced, and lacked the capabilities to deliver both the Government Department functions around policy and legislation, as well as those of an independent rail safety regulator. Essentially, the Department's Rail Safety Branch deliver the same functions which in GB are delivered by the Department for Transport and the GB Rail Regulator, and in Ireland are delivered by the Department of Transport and the Irish Rail Regulator. While Rail Safety Branch has received additional resources and expanded its capabilities since EU Exit, the review has provided an evidence base to identify possible options to ensure the functions are efficiently and effectively delivered and rail regulation is 'fit for purpose'.

Gaps in Northern Ireland rail legislation

It should be noted that the Phase 1 legislative review also identified related legislative issues that lack clarity and could impact the effectiveness of rail regulation going forward. The lack of clarity is centred on the gaps in the NI statute book compared to the GB legislative framework, specifically the Transport and Works Act 1992, the Railways Act 1993, the Railways and Transport Safety Act 2003 and the Railways Act 2005. The legislative review identified the following gaps in NI statute, some of which resulted from EU Exit:

- No powers to order the construction of a railway.
- No offences relating to drugs and alcohol for safety critical workers.
- No powers to regulate the train driving profession.
- No powers of economic regulation of the railways.
- No powers in relation to security of the railways.
- No powers to charge for rail regulatory activities.

In addition to the legislative gaps identified above, there is also a lack of clarity around enforcement of railways legislation. In some instances, the Department is identified as the enforcing authority and in other instances the Health & Safety Executive Northern Ireland (HSENI) are identified as enforcing authority. Similarly, on the economic regulation of railways, in some instances the Department regulates the industry while in other instances ORR regulate. It is therefore important that when making decisions to ensure rail safety regulation in Northern Ireland is fit for purpose that the issues around legislative gaps, as well as those lacking clarity, are

also addressed. Further detail on the Phase 1 review and its findings is contained in the body of the Phase 1 report.

3.2 Summary from Phase 2 case studies

The Phase 2 case studies examined the rail safety regulatory role in Northern Ireland, to establish our base line for comparison, and rail safety regulators in Ireland, New Zealand, Great Britian, South Africa, Australia and the USA. These other jurisdictions were selected as they provide a range of different regulatory models and approaches, as well as ease of access to documentation in English. In addition, the Phase 2 case studies examined other NI based regulators such as the Health & Safety Executive for Northern Ireland, the Utility Regulator, and the Transport Regulation Unit (Department for Infrastructure).

A desk-based case study approach was adopted for Phase 2 of the review. The case studies commenced with a shortlisting process to identify potentially suitable regulators to include as a case study, as outlined above. Once suitable case study organisations were identified a data extraction tool was developed to ensure the review obtained the necessary information in a consistent format. On completion of the data collection stage of Phase 2, the data was subject to extraction from the data extraction tool, it was then consolidated and analysed thematically, and section 3 reports the findings from the analysis. The remainder of this section summarises the key conclusions from the case studies.

Type of regulating organisation, its size, and degree of regulatory independence

There are a number of different approaches to organising the rail safety regulatory role. In some jurisdictions, there are executive agencies (USA, New Zealand), in others there are non-Ministerial Government Departments (GB), while in others there are independent corporate bodies (Ireland, South Africa, Australia).

One common theme across all rail safety regulators is their regulatory independence from political decision-making. While there are differences in organisational form, all regulators are broadly organised to minimise the potential from political interference in the day-to-day regulatory decision-making process.

Similarly, both HSENI and the Utility Regulator both have a significant degree of regulatory independence from political decision making, as HSENI are a nondepartmental public body and the Utility Regulator is a corporate body. Consequently, the degree of regulatory independence is set in legislation, although both organisations are accountable to Ministers and the Northern Ireland Assembly.

In contrast, Transport Regulation Unit are like Rail Safety Branch in that they are a branch within a Government Department. As such, both are subject to Ministerial priorities and decisions as well as the budget priorities which are allocated by the

Northern Ireland Executive and Assembly. This manner of organising a regulatory function retains a risk of political influence on regulatory decision-making.

Functions of regulator

Broadly speaking, the rail safety functions across all regulators are very similar with few areas of difference. In terms of common functions, each regulator is responsible for occupational health and safety on their rail networks, authorising or approving the infrastructure and rolling stock deployed on the network, as well as monitoring regulatory compliance and undertaking enforcement action where necessary. Finally, most regulators have some investigatory responsibilities, as well as collecting and publishing information or statistics on the safety of the rail network.

Similarly, NI based regulators in other fields have a clear and consistent set of responsibilities and they are responsible for monitoring regulatory compliance and undertaking enforcement action, sometimes in partnership with other organisations.

In contrast, the delivery of rail safety responsibilities is split across organisational boundaries. Rail Safety Branch performs much of the regulatory functions as those delivered by regulators in other jurisdictions, although it has limited enforcement powers, mainly relating to train driver licensing. Consequently, Rail Safety Branch must liaise closely with regulatory counterparts (mainly HSENI) for them to take enforcement action. This results in duplication of work as HSENI inspectors must undertake their own investigation which inevitably delays action being taken.

Funding mechanism(s) for regulator

Most case study organisations appear to have a mixed funding model with elements of direct Government funding and industry funding through a levy/ charge or fees, although rail regulation in GB is fully industry funded, and Australia is moving in this direction. Where case study regulators do have a mixed funding model, the majority of funding comes from industry rather than Government. The USA is an exception, and it appears the majority of the Federal Railroad Administration funding comes from Government. However, unlike other regulators the FRA is also responsible for providing grants to make safety improvement from this budget. Therefore, it is unclearwhat the extent to which regulatory activity like audit and inspection is funded by Government or industry.

In terms of the other NI based regulators of other fields, the Utility Regulator receives most of its funding from industry with a small grant from its sponsoring Government Department. In contrast, both HSENI and TRU are entirely funded by their Government Departments. Likewise, the funding model for rail safety regulation in Northern Ireland is provided by Government coming through Departmental allocations.

Regulatory compliance and enforcement

In general, Rail Safety Regulators across the case study organisations included in the Phase 2 report have similar compliance and enforcement functions and powers.

They control entry to the sector through licences, permits, certificates, etc. They employ inspectors who undertake monitoring and supervision activities of rail operators through audit and inspection, and investigation of incidents and accidents. Further, regulators enforce legislative requirements usually by means of notices or orders, the placing of conditions on licences or certificates (or suspension or revocation) and in some instances issue fines, seize equipment and undertake prosecution of operators.

Similarly, NI based regulators in other fields have a range of compliance and enforcement powers that reflect their role and remit. For HSENI this includes issuing improvement and prohibition notices, as well as prosecution, while the Utility regulator can issue fines and penalties, and TRU can disqualify Transport Managers and Operators.

In contrast, the compliance and enforcement functions for rail safety in Northern Ireland are split across separate organisations. Rail Safety Branch exercises compliance monitoring powers while HSENI is generally responsible for undertaking enforcement activity. This has the potential to result in differing views on the requirement for possible enforcement action, as well as duplicating investigatory effort and delaying enforcement action.

Engagement/ co-operation with other bodies

In Northern Ireland, like all other jurisdictions and case study regulators, there are arrangements in place to ensure the cooperation of rail safety authorities and workplace health and safety authorities. These arrangements reflect good practice seen across these jurisdictions with good collaboration and cooperation between the Department as Safety Authority and HSENI. The key difference is in relation to enforcement powers and the reliance on HSENI as the enforcement authority for safety authority functions.

Rail accident investigation

Each case study jurisdiction had fairly similar arrangements with the exception of South Africa. The RSR in South Africa was the only regulator who also had responsibility for investigating the most serious of accidents. In saying that, the arrangements for investigating rail accidents in South Africa provide an opportunity to draw on external experts as part of the process. With that exception, in all other jurisdictions there are separate bodies for rail safety regulation and investigating the most serious rail accidents. There were some minor differences with some jurisdictions having specialist rail investigation bodies with other jurisdictions combining rail accident investigation with other transport modes such as aviation and maritime. Nevertheless, the practice in Northern Ireland reflects that in other case study jurisdictions.

3.3 Summary from Phase 3 stakeholder interviews

The Phase 3 stakeholder engagement interviews examined the views of stakeholders on key issues effecting the organisation of rail safety regulation on the NI rail network. Specifically, the interviews considered the independence of rail safety regulation from Government and political influence; the role of the regulator; financing rail safety regulation; the nature of engagement with the sector; and the impact of government plans for railways on rail safety regulation.

The Phase 3 Stakeholder Engagement interviews took place in October and November 2023 and once complete they were transcribed to pick out the key points against each of the main issues in the question set as well as any specific points not previously covered. Subsequently the data was then consolidated and analysed thematically. The remainder of this section summarises the key conclusions from the stakeholder engagement.

Role, remit and activities of Rail Safety Authority

At present, the Department fulfils a dual role as Government Department with responsibilities for policy, legislation and ministerial advice, as well as fulfilling the role of rail safety regulator. During the stakeholder engagement interviews, some stakeholders felt there was a potential tension with some of the other functions delivered by the Department, specifically in its role as the main funding body for Translink as well as being responsible for the public service agreement. Although no interviewees believed it had ever happened, there was a concern that potential financial issues could influence safety recommendations.

These sorts of issues have been mitigated by a split in enforcement powers between the Department and HSENI. However, this has been made more complex with economic issues being regulated on a UK wide basis by ORR. As a result, it was felt that this had created a confused climate regarding rail regulation. There was a broad view among stakeholders that there should be clarity in the role of the regulator, and that there should be a single body regulating the railways as there is in GB and Ireland. Further, it was felt it should be distinct from HSENI with its own enforcement powers, and with that in mind it was considered preferable for the regulator to be independent from any potential political influence in regulatory decision-making.

Nevertheless, there was a recognition of some of the benefits of the current organisation of rail safety regulation. Stakeholders generally appreciated that there was a single organisation to engage with on policy, legislation, technical standards and rail safety regulatory matters. This was found to be particularly helpful when combined with an increased level of engagement between the Department and the sector to help manage through the impact of EU Exit and ‘dual regulation’ although this latter issue has resulted in increased costs and an administrative burden. In saying that, there was a view among those stakeholders having to engage with the regulator that having one body overall, including fulfilling the roles currently delivered by HSENI (enforcing rail safety regulations) and ORR (on economic regulation)

would help to mitigate some of these costs and could potentially reduce the costs and administrative burden of engaging with multiple regulators.

Monitoring, compliance and enforcement of Rail Safety

Stakeholders participating in the interviews highlighted the somewhat confusing picture regarding the responsibilities of the respective organisations involved in rail regulation in Northern Ireland. Particularly as regulatory activity, compliance monitoring and enforcement is split across several bodies with the Department, HSENI and ORR, having responsibilities, which can overlap, for regulating different aspects of the railway in Northern Ireland.

There was a widespread view among stakeholders that there should be a single regulatory body which covers all the rail regulatory and rail safety responsibilities that are currently split between the three organisations. There was a recognition that HSENI should rightly have responsibilities for occupational health and safety, and that the Department may need to draw on the expertise of ORR, however, having a single body to engage with on rail safety was felt to provide an optimal solution for rail regulation on the NI Network.

For the Department to be fully capable to lead on the rail regulatory function, and remove the current confusion, stakeholders felt that the Department should appoint its own inspectors to lead the monitoring and supervision process and undertake audit and inspection activity with powers to take enforcement action where necessary. It was felt that appointing their own inspectors that the Department could potentially reduce their reliance on the availability of ORR inspectors and would have the benefit of facilitating more joint inspections with CRR. This has the potential to reduce the overall level of regulatory burden on railway operating companies through streamlining their engagement with regulators in both Northern Ireland and Ireland. While this would be unlikely to eliminate ‘dual regulation’, it may potentially mitigate the greatest effects of ‘dual regulation’ in terms of costs and administrative burden.

In addition, stakeholders felt that appointing local inspectors could potentially increase the quality of regulation in Northern Ireland as local inspectors would have greater familiarity, knowledge and experience with the network and the organisations working on the network. A number of stakeholders felt this could also potentially contribute to more effective control of safety standards among contracting organisations working on or near the network. This has been a challenging issue for the sector and some stakeholders felt that a regime similar to GB, with it’s system of licensing (or licence exemptions) for those organisations would be helpful. Having local inspectors with knowledge and experience of the network was considered a vital component of improving safety standards among contracting organisations working on the network.

Financing and Resourcing Rail Safety Regulation

Unlike rail regulators in neighbouring jurisdictions, the Department is entirely funded through annual Government budget processes. The main source of financing for public expenditure within Northern Ireland remains the Departmental Expenditure Limits (DEL) and Annually Managed Expenditure (AME) from HM Treasury. In GB, rail regulation is entirely industry funded with a levy of 0.1% of turnover placed on all operators with more than £1m turnover annually and a much smaller contribution for those with a smaller turnover. In Ireland, 75% of the funding comes from an industry levy and the remaining 25% as grant-in-aid from central Government.

With the post EU-Exit changes to how the industry is regulated across the Island of Ireland, there was a recognition among stakeholders that a greater balance in the funding model in Northern Ireland was necessary. As such, it was broadly acknowledged that the cost burden of regulation should be shared across the sector and not solely focussed on Government funding. To achieve a better balance, most stakeholders felt that an annual safety levy was appropriate to fund NSA activities, while a system of fees or charges for authorisations would be appropriate to cover the costs of competent authority activities. This would broadly follow the model in GB and Ireland and is a funding model which operators are familiar with given railway operating companies operate services in both jurisdictions.

While stakeholders broadly felt that this model would result in better funding for rail regulation in Northern Ireland, railway operating companies participating in the stakeholder interviews highlighted the increased costs and administrative burden of regulatory activity across both jurisdictions. This is a growing challenge for railway operating companies. Although there are increased costs, the larger aspect of the challenge was in relation to the administrative burden on a small number of key people in each railway operating company. As such, stakeholders interviewed highlighted the importance to grow the talent pool both for regulators and railway operating companies to be able to facilitate the level of regulation across both jurisdictions.

It should be noted that ‘dual regulation’ is partly an outworking of EU Exit and the fact that Northern Ireland is considered a third country by the EU in relation to rail safety (although not interoperability). As such, it is unlikely that this situation will change in the short-to-medium term. Nevertheless, the rail regulators in Northern Ireland and Ireland have established an MoU and are working towards greater cooperation and joint inspections to try and minimise and mitigate the cost and administrative burden for regulated entities.

Engagement / co-operation with stakeholders

The current level of engagement between the Department and key stakeholders in the local sector and also with neighbouring jurisdictions was felt to be an area of positive practice among many of those interviewed. In engaging with the local sector, stakeholders felt this had been particularly helpful in assisting them navigate the

application of the rail regulatory framework at a time of uncertainty following EU Exit. Stakeholders are keen to see this type of engagement continue and evolve. However, some are concerned that this type of engagement could become more challenging for the sector particularly where the Department has greater enforcement powers. Some stakeholders thought this could potentially discourage the sector from engaging with the Department if they felt the risk of this engagement could lead to regulatory enforcement action. It should be noted this was a very small number of those interviewed who felt that it was a possibility although unlikely. Among those who felt this could be an issue, having a regulator that was independent of Government was thought to be potentially the best option to address this concern.

During the interview process, stakeholders identified two key developments for engaging with the sector they considered necessary moving forward. Firstly, a number of interviewees reflected that having different rules in different jurisdictions would only create confusion and could potentially complicate enforcement on cross-border services or add costs to cross-border rail projects. Consequently, a number of those interviewed highlighted the potential need for new structures for engaging on an All-Island basis involving Government Departments, regulators and the wider sector to work towards converging technical standards and safety rules. Secondly, a small number of interviewees highlighted that the safety regulators in neighbouring jurisdictions engage directly with passenger groups. This is not something which has often occurred between the Department and any local passenger representative bodies as they would typically engage with the General Consumer Council, which is beyond the scope of the Rail Safety Review.

In addition, the unique NI position, which comes as a result of the Windsor Framework agreement that applies the EU Directive for Interoperability but not the safety directive was highlighted by interviewees. It was noted that this creates a challenge for NI in having to engage with a network of EU institutions to understand and fully engage with the EU interoperability framework while also having to engage with the OTIF structures to fully understand and apply the necessary safety frameworks for cross-border rail transport. This means that the Department has a more extensive breadth of engagement requirements than either Government Departments or Regulators in neighbouring jurisdictions. While the Department does not have the resources to engage at the same levels as either, it was felt vitally important by local stakeholders that this engagement occurred to ensure the Department could properly help stakeholders meet their regulatory obligations.

Impact of Government plans for railways on rail regulation

A number of stakeholders discussed the potential impact of the All-Ireland Strategic Rail Review (AISRR) on rail regulation. The AISRR proposes a significant expansion of the network with potentially doubling the total track miles on the NI network, delivering at least 6 new stations and upgrading several more, and introduces

(discontinuous) electrification across the network. On top of this the AISRR proposes re-introducing freight operations onto the network for the first time since 2007.

This presents a considerable challenge for the Department in terms of capacity and capability in its role as Competent Authority for Interoperability to firstly authorise into service new infrastructure and vehicles, as well as its role as National Safety Authority in regulating safety across more and varied operators on the network. As highlighted above, the Department relies on the expertise of ORR inspectors to assist the authorisation process. However, like many public sector organisations ORR has resourcing challenges making it incredibly difficult to manage its own authorisation requirements let alone supporting a significant increase in the quantity of NI authorisations. Further, it was acknowledged by a number of stakeholders that with GB diverging from the EU standards that apply in NI this could add to the challenge of drawing on ORR expertise to support the assessment against interoperability requirements. Consequently, many stakeholders expressed the view that the Department would need to identify appropriate mechanisms to resource this work – potentially either from increasing its own staff pool or drawing from the market in conformity assessment. Similarly, most stakeholders felt that the Department will also need to expand its own pool of inspectors to resource the monitoring and supervisory aspect of rail safety regulation.

Stakeholders also recognised that the AISRR would present similar challenges in terms of the scale of work for regulation and interoperability authorisations for counterparts in Ireland. As such, some stakeholders felt that consideration ought to be given to delivery structures, including project governance, applicable technical standards, and joint regulatory structures where appropriate. Among some stakeholders it was felt that it would require coordinated and joint action across all aspects that would be impacted by the review to deliver the desired outcomes.

Building on this, some stakeholders highlighted the importance of convergent technical standards across the Island of Ireland to support delivery of the AISRR. There was a sense among most stakeholders that without standards convergence there is a risk of adding unnecessary costs to cross-border projects. Having appropriate structure in place to coordinate and support converging technical standards was felt to have potential to minimise any cost impact from standards compliance.

4. Conclusions

This review of the rail safety regulatory framework in Northern Ireland set out to understand better the role, remit and delivery of the rail regulatory statutory duties, how rail regulation could be better organised for the benefit of the sector locally, and possible options for funding and resourcing.

The review identified the statutory responsibilities the Department has for rail regulation across three distinct functions; 1) National Safety Authority; 2) Competent Authority for Interoperability; and 3) Competent Authority for regulating the train driving profession. While the review identified that the Department, as regulator, has broadly the same functions as most other rail regulators, it did identify some anomalies in terms of regulatory powers in terms of the split between regulatory functions and enforcement powers. This anomaly has a real-world impact with additional administrative and cost burdens placed on the local industry having to engage with multiple regulators with overlapping responsibilities. The review also identified further anomalies in legislation such as the lack of offences for drugs and alcohol for safety critical workers. Further, although the review identified these core functions, much of the existing legislative base was made using the powers of the European Communities Act 1972 which has now been repealed leaving a lack of powers to update or set new regulations. This will need to be addressed to ensure the Department can adequately regulate the rail sector.

The review considered how rail regulation was organised in other jurisdictions with all rail regulators established independently of direct government control. Further, the review identified that while there are some benefits from the current organisation of rail regulation in NI, these are outweighed by the benefits of regulatory independence from Government decision-making. The review identified a stakeholder preference for an independent regulator with its own inspectors that have enforcement powers to ensure compliance with rail regulations. Further, stakeholders felt that the full remit of rail regulation (safety, market access, and economic regulation) should be delivered locally, ensuring that the needs of the local sector are fully considered in regulatory decision-making. Nevertheless, stakeholders felt that the most serious of rail accidents should continue to be investigated by the UK wide Rail Accident Investigation Branch (RAIB).

The review also considered different funding models for rail regulation applied in different jurisdictions compared to the fully Government funded model in Northern Ireland. With increasing services from existing operators (Northern Ireland Railways and Irish Rail), as well as heritage operators (Rail Preservation Society of Ireland) and potentially freight operators in future, stakeholders the cost burden of regulation should be shared across the sector. Among stakeholders generally, there was a view that an annual safety levy was appropriate to fund NSA activities, while a system of fees or charges for authorisations would be appropriate to cover the costs of competent authority activities.

Although stakeholders expressed a preference for a rail regulator independent of its sponsor Government Department, there was widespread recognition that industry engagement by Rail Safety officials had been a positive development over the last five years. This engagement has been viewed as particularly helpful in assisting the local sector work through the impacts of EU Exit and the application of the Windsor Framework. Consequently, stakeholders were keen that this engagement is maintained and enhanced to ensure the impact of legislative and regulatory divergence between NI and the EU or between NI and GB is managed appropriately, Further, it was acknowledged that the Department would be required to engage with a range of EU and international organisations to represent NI interests and ensure that appropriate structures were in place to support cross-border rail services.

Finally, the review considered the potential impact of the Department's broader plans for the rail sector, particularly the All-Island Strategic Rail Review. The expansion of the network, deployment of new technology and introducing new service types present a significant challenge for rail regulation, particularly in terms of capacity and capabilities. With this in mind, local stakeholders identified the need to invest in developing local expertise in the regulator (and wider sector) to deliver these priorities. Furthermore, it was identified that legislative gaps for railway construction and development would have to be closed to deliver these priorities. Overall, stakeholders felt that this would have to be supported by cross-border delivery structures that would include support for converging railway standards and rules.

5. Next Steps

Phases 1, 2 and 3 of the review have identified the current scope, the potential for greater clarity around the scope of the role and remit for rail safety branch, as NSA, as well as establishing the views of key stakeholders in terms of how rail safety regulation could be structured going forward. Phase 1 highlighted the full extent of the statutory duties and functions of the NSA, as well as potential gaps. Phase 2 offered some insights into potential options for organising these duties and functions based on the lessons from rail safety regulators in other jurisdictions as well as other NI base regulators in other fields. Phase 3 set out the views of stakeholders in terms of their preferences for organising the duties and functions of the rail regulator.

The conclusions of this Executive Summary report are set out in the previous section above and identify stakeholder preferences to address the issues identified during the three phases of the review. In order to address a number of these issues it will be likely that legislation is required.

In terms of next steps, the key findings of the Rail Safety Review will now be distilled into potential policy options to address the range of issues identified in the review for Ministerial consideration. Once the Minister has had the opportunity to consider the issues and identified preferred policy solutions, there will be a consultation to obtain the public's views on the proposed policy options. The outcome of the consultation will inform the development of the Department's policy on rail safety regulation and any legislation that may be required to implement the policy.