Rail Safety Review

Phase 3 Report

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1. Introduction

1.1. Background

The Department for Infrastructure (DfI) acts as the National Safety Authority (NSA) for the Northern Ireland rail network 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.

Following EU Exit and the different ways in which the legislative base had been amended for NI compared to GB, alongside the Northern Ireland/ Ireland protocol obligations stemming from the Withdrawal Agreement, it was necessary to review the way in which rail safety was organised in DfI. It was felt important to clearly establish the statutory duties for rail safety that were within the remit of Rail Safety Branch. As such, Phase 1 of the rail safety review consists of an extensive legislative review to identify the scope and extent of statutory duties as NSA.

Phases 1 and 2 of the review have identified the current scope and potential for greater clarity around the scope of the role and remit for rail safety branch, as NSA. 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.

Overall, Phases 1 and 2 have highlighted some key questions that need to be addressed. Specifically, these are around issues such as the level of regulatory independence from Government; regulatory compliance and enforcement powers for the NSA; how the NSA should be funded; and how the impact of broader government plans for investing in railways on rail regulation could be managed.

In order to address these questions Phase 3 will consist of stakeholder engagement across the sector in Northern Ireland. The stakeholder engagement in Phase 3 will employ qualitative research methods including 1-2-1 and small group interviews to obtain data and insights from key stakeholders. While these conversations will have key areas to cover, such as those outlined above, they will take a less structured approach to ensure participating stakeholders can focus their response on those issues or ideas they view as most important/ relevant. Each interview will be transcribed to capture they key ideas/ issues discussed and, like Phases 1 and 2, will be subject to thematic analysis to identify key concepts to inform possible options for the future organisation of the rail safety function.

1.2. 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 felt necessary to conduct the review in three phases. Given the challenges set out in the Phase 1 report in relation to new, extended or additional responsibilities, especially in terms of reserved legislation DfI was not as familiar with as that 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. In contrast, it was felt that Phase 2 should obtain data on best practice from other jurisdictions in relation to how the rail safety function is organised, funded and delivered, as well as exploring other models for regulation which are deployed in Northern Ireland. This will provide insight on how other jurisdictions address those issues set out in objectives 2 and 3, as well as exploring how other policy areas are regulated in NI with a view to how they address similar issues in a different field. Finally, Phase 3 of the review will examine stakeholder views on what the role/ remit of a rail regulator should be, and how this role/ remit should be funded and delivered.

As Phase 3 of the review is focussed on obtaining and better understanding the views of stakeholders regarding how railway safety is regulated it was considered appropriate to directly engage with stakeholders through one-to-one or small group interviews with representatives from a single organisation.

2.2. Phase 3 – Stakeholder Engagement Methods

The stakeholder engagement phase of the review 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 interviews 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.

The Phase 3 Stakeholder Engagement interviews were conducted between October 2023 and January 2024. Before the interviews commenced it was necessary to develop a consistent question set to ensure the interviews obtained the required data from participants. It should be noted that it was also important to balance this consistency with flexibility in interviewing technique to enable interview participants to discuss issues of importance to them and ensure no avenues of potential learning were missed. Alongside developing the interview guide and protocols, the review

team identified a list of potential stakeholders that would provide helpful insight into the key questions being developed and address the objectives of the review. 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. These processes are set out in more detail below.

2.2.1. Identifying stakeholders for Phase 3

Phase 3 of the review commenced with a scoping exercise to identify potential local stakeholders for inclusion. This included considering potential engagement with stakeholders from across the rail sector in Northern Ireland, as well as potentially interested parties in GB and Ireland. The scoping exercise identified that the review would seek to engage with the following stakeholders:

- Train operating companies providing services on the NI mainline (i.e. Northern Ireland Railways, Irish Rail);
- Railway infrastructure manager for the NI Network;
- Construction and maintenance companies working on the mainline;
- Training and consultancy organisations providing services to railway organisations;
- Rail sector representative organisations (Rail Safety & Standards Board, Railway Industry Association);
- Heritage railway organisations;
- UK, Irish and devolved Government Departments; and
- Rail Regulators in neighbouring GB and Ireland jurisdictions.

From this range of organisations over 30 individuals from 10 different organisations participated in either 1-2-1 or small group interviews between October 2023 and January 2024. Each interview with local NI stakeholders were held face-to-face in Belfast with some GB and Ireland based organisations and individuals taking place by Microsoft Teams. Generally, interviews were scheduled for 60 minutes for 1-2-1 sessions and 90 minutes for small group sessions.

2.2.2. Developing the interview guide

In order to ensure that each interview obtained the necessary data from participating stakeholders it was important to develop a consistent question set to ensure the interviews obtained the required data from participants. This process commenced with a review of the key findings emerging from Phases 1 and 2 of the review. Phase 1 identified the broad role and remit of the Department as Rail Regulator

incorporating responsibilities as National Safety Authority, Competent Authority for Interoperability and Train Driver Licensing Authority. In addition, Phase 1 identified a number of gaps between NI and GB legislation which have resulted in a lack of clarity in terms of policy and regulatory responsibilities given the current organisation of the rail regulator role within the Department. Phase 2 considered how rail regulation was organised in other jurisdictions and how other regulators in the NI jurisdiction are organised to identify potential insights into organising rail regulation in NI. The review of these findings identified some key topic areas to be explored further and identify specific insights with local stakeholders that will benefit rail regulation in NI. These broad topic areas included:

- Role, remit and activities of Rail Safety Authority
    - Current delivery / regulatory independence / improvements / future role

- Monitoring / compliance and enforcement of Rail Safety
    - Licensing and licence exemptions / who should licence / who should be licenced.
    - Safety inspections and powers of inspection.

- Financing and Resourcing
    - Current arrangements and future opportunities

- Engagement / co-operation with stakeholders
    - Regulation v Government department role / Interoperability

- Government's future plans for the railways (Union Connectivity Review / All Island Strategic Rail Review
    - Impact of review / role of regulator

In developing the specific questions under these topic areas, the review examined a number of key National Audit Office documents on principles for effective regulation[1], an overview of regulation[2] and a guide to regulation[3]. The examination of these documents on approaches to regulation and key issues for regulators enabled the development of a long list of questions that were allocated to various topic areas.

[1] https://www.nao.org.uk/wp-content/uploads/2021/05/Principles-of-effective-regulation-SOff-interactive-accessible.pdf
[2] https://www.nao.org.uk/wp-content/uploads/2020/03/Overview-Regulation-2019.pdf
[3] https://www.nao.org.uk/wp-content/uploads/2017/09/A-Short-Guide-to-Regulation.pdf

2.2.3. Data collection

In advance of the scheduled 1-2-1 or small group interview, interview participants were provided with a broad agenda for discussion. This was based closely on the key topic areas identified above. The decision to provide only the topic areas was to ensure that interview participants were familiar with the topics of interest to the review team without providing too much detail, such as the specific questions, that could result in participants preparing answers beforehand. It was felt important to avoid gathering solely prepared answers in order to maximise the range of different views that could be captured during the interview process.

The long list of questions prepared under the broader topic areas were used as a guide to interviews rather than a rigid protocol for engaging with stakeholders. The review team were keen to let interview participants lead the discussion within the boundaries of the broad topic areas. This is a common approach to social research to enable a wide variety of opinions to be collected.

It was decided by the review team not to record the interviews due to potential concerns about the storage, protection and destruction of the audio/ video data that would be collected as recordings. As such, the review team felt that it would be prudent to take extensive notes during interviews by two different review team members. It was felt that this would maximise information gathered and corroborate the data recorded.

2.2.4. Data consolidation and analysis

Once the 1-2-1 or small group interview was complete, the notes taken by the review team members were combined to form one note of the meeting which was then reviewed and revised by all review team members present at the interview. This was subsequently shared with the interview participants for review and comment. This resulted in an agreed record of the interview, as well as providing an opportunity for interview participants to add or clarify points.

The review team subsequently prepared an analysis spreadsheet to consolidate the information captured across all the 1-2-1 and small group interviews under the broad topic areas of interest to the review identified above. The detail from each interview was examined by team members for common ideas/ concepts to identify recurring themes or patterns within the data. This helped to inform a thematic analysis within each topic area across all stakeholders that identified issues where there was a general consensus as well as those issues where there were differences among and between stakeholders.

2.3. Reporting the findings of Stakeholder Engagement

Chapter 3 of this report details the findings of the Phase 3 Stakeholder Engagement and identifies common themes across stakeholders in terms of their views on each of the main topics discussed during the interview process. It commences with a consideration of stakeholder views on the role and remit of rail regulation for the NI sector and addresses specific issues such as independence from Government and political influence in regulatory decision-making.

Next, chapter 3 considers stakeholder views on monitoring, supervision and regulatory enforcement including powers for railway inspectors in NI. This part of chapter 3 centres on the concerns of stakeholders on the clarity of the roles and remits of those with a regulatory interest and role in NI.

Chapter 3 then examines with stakeholders the financing and resourcing of the regulator and regulatory activity. With the range of participants including regulators and Government Departments in other jurisdictions across the UK and Ireland it was possible to gather participants experiences of possible funding arrangements and models and their effectiveness.

Subsequently, chapter 3 examines participants views on engagement between the regulator and the rail sector. This part of chapter 3 looks at current experience in NI, as well as other UK and Ireland jurisdictions, as well as local stakeholders' views as to how this could look in future.

Finally, chapter 3 concludes with a consideration of stakeholders' views on the potential impact on the regulator and regulatory activity of large scale Government strategies for rail investment such as the All-Island Strategic Rail Review (AISRR).

3. Findings

3.1. Role, remit and activities of Rail Safety Authority

The Department's RSA has a broad range of roles and responsibilities within its remit covering policy and legislation in relation to the interdependent areas of rail safety and interoperability of the rail system. In addition, it has operational responsibilities for undertaking safety regulation activity, such as licensing, safety certification, compliance monitoring and supervision, as well as audit and inspection. This is combined with responsibilities as competent authority for interoperability that include authorising new or significantly upgraded infrastructure and vehicles, as well as overseeing the development and maintenance of the National Technical Rules which apply to the network. Finally, while the Rail Safety Authority has some enforcement powers, it is ultimately a mixed picture with a lack of clarity around whether the Department or HSENI can enforce against those operational parts of the RSA remit.

It is also worth noting that from the early stages of the EU Exit negotiations in 2017/18, as well as in response to increased rail investment, the Department's approach to delivering the RSA remit has evolved. The RSA more actively fulfils this remit in relation to both safety regulation and interoperability authorisations with support from the GB rail regulator.

3.1.1. Current approach to rail safety regulation

As highlighted in the Phase 2 Report, the rail safety regulatory functions are delivered by the Department for Infrastructure, specifically Rail Safety Branch, which is a Government Department headed by a Minister and responsible to the Northern Ireland Assembly. Alongside the traditional Government Department role and responsibility of the branch for developing policy, making legislation and advising the Minister, Rail Safety Branch also deliver regulatory responsibilities as National Safety Authority, Competent Authority for Interoperability and regulates the train driving profession.

It was generally acknowledged across the range of stakeholder groups that the current delivery of rail safety regulation in Northern Ireland represented an improvement on the previous approach. In particular, stakeholders identified positives in terms of increased communication and engagement. Stakeholders felt that it was helpful that the RSA was willing to meet regularly, cover a range of topics in discussion and providing guidance where appropriate was beneficial in helping them navigate rail regulation. Further, the inspection activity of the RSA over recent years was also felt to be beneficial to the sector in helping to identify areas for

improvement in key risk categories, as well as highlight examples of best practice in the local sector.

While the current approach to delivering rail regulation was felt to be an improvement, parts of the sector identified that it had resulted in an increased cost of doing business with more resources having to be allocated to engaging with, and managing the response to, regulatory activity. Concerns were also raised regarding dual regulation in both Northern Ireland and Ireland. The increased regulatory activity Translink have experienced from their operations in Ireland was felt to be significantly in excess of the regulatory activity in Northern Ireland and has placed a significant burden on their business.

Further, several stakeholders commented that they felt there is potential for tension to arise between the work the Department undertakes on rail safety issues, while it is also the funding body for Translink. Specifically, some stakeholders were concerned that while they did not believe it had ever happened that in future there was the potential for financial concerns around tight budgets to influence safety recommendations in audits and inspections. Consequently, there was a desire among some stakeholders to see this issue addressed in the organisational structure of the RSA.

3.1.2. Independence from Government

A number of stakeholders felt that separating the rail regulatory role from the funding role would be best achieved by having a regulator which is independent from Government. This is the situation in both GB and Ireland and stakeholders with experience of those regimes identified key benefits to that approach to rail regulation. Stakeholders highlighted that the rail regulators in both GB and Ireland did not experience political pressure in relation to project authorisations nor when conducting compliance and enforcement activity.

The independence from Government of both regulators means that they are able to take an impartial look at the rail sector and interpret the regulatory regime with sectoral stakeholders able to appeal decisions of the sector through legal challenges. Stakeholders noted that in both GB and Ireland that while the regulators were independent from Government, they were subject to parliamentary scrutiny and Government oversight. This was felt to work well in ensuring a balance in regulatory independence to investigate those issues of interest, while ensuring best practice in regulatory activity.

Further, independence from Government has meant that regulators in both GB and Ireland have been able to develop and/ or recruit appropriate levels of railway expertise to undertake the regulatory function. Stakeholders felt this was something that would be particularly difficult for a Government Department in Northern Ireland

to achieve as a result of civil service pay scales and recruitment challenges, and consequently would be more readily attainable by an independent body.

Nevertheless, some stakeholders noted potential disadvantages in relation to independence from Government. Those stakeholders with experience of the relationship between Government and regulator noted that managing disputes and disagreements can be challenging with positions becoming entrenched on occasions – making it difficult to make progress.

It was felt that there are some benefits to having the Government Department fulfil the role of regulator, as it ensures the sector has one organisation which is across all the key issues and challenges facing the sector particularly in dealing with the UK Government, Irish Government and the EU institutions (EU Commission, European Union Agency for Railways). All stakeholders acknowledge the complexity of the outworkings of the Windsor Framework in relation to possible divergence from the EU, GB or both, particularly at a time when the Department has gained more responsibility for rail safety and interoperability policy. Stakeholders felt there was insufficient resources across Government and the sector and that having one organisation could be beneficial, although it needs to be adequately resourced.

It was also noted that the current organisation of rail regulation means that it is possible to quickly and easily share information and experience between DfI teams responsible for rail regulation and railway funding. This has led to improvements in resource planning for the RSA and a greater ability to scrutinise the CSM process for significance testing on whether a project authorisation is required. Equally, the DfI Translink Sponsor Unit has been able to gain access to key information on rail safety enabling the more effective scrutiny of business cases aimed at safety critical work.

However, stakeholders also acknowledged that the combined responsibilities of a Government Department and Regulator presents a significant challenge to developing deep knowledge and expertise across a wide and varied remit for safety and interoperability.

Generally, stakeholders would prefer a regulator that is independent from Government. However, most stakeholders felt that the first issue which should be addressed was ensuring the RSA had appropriate enforcement powers and clarifying the respective roles of RSA and HSENI.

3.1.3. Developing the role of the regulator

A key consideration for stakeholders is the split nature of rail regulation. Licensing, certification, authorisation and regulating safe operation is the responsibility of the Department, although enforcement is split between the Department and HSENI. Regulating occupational health and safety is the responsibility of HSENI, although this is inextricably linked to the safe operation of the railways. Finally, economic

regulation is undertaken by the ORR on a UK wide basis, however this is undergoing significant change with the introduction of Great British Railways and there is likely to be an increasing level of divergence in future.

Most stakeholders felt that it would be helpful to have one regulatory body for the railways across licensing, certification, authorisation, safe operation of the railway, occupational health and safety, and economic regulation. In effect mirroring the position in GB and to a certain extent Ireland[4]. Having one regulatory body was felt to benefit the regulator as it would facilitate the development of a deeper knowledge and expertise of the railways by concentrating the range of resources currently allocated to undertaking regulation across several organisations into one organisation. Stakeholders felt that the current approach which splits responsibilities and resources across several organisations presents challenges in developing local capabilities and expertise.

It was also felt to benefit the sector by reducing the regulatory burden of having to engage with three separate organisations with remits which often overlap and coincide. It was also felt that having a single regulatory body would be beneficial in streamlining the accident and incident reporting process. The current regulatory framework requires Railway Undertakings to report accidents to the Rail Accident Investigation Branch, HSENI and the RSA.

Stakeholders also felt that the current situation is quite confusing in terms of responsibility for regulatory activity and enforcement. It was noted that there are instances where one regulatory body has responsibility for undertaking regulatory activity while another has responsibility for undertaking enforcement action. For instance, the RSA has responsibilities for undertaking regulatory activity, such as safety inspections or authorising the use of new infrastructure, while HSENI are responsible for taking enforcement action if a railway undertaking does not comply with the regulations. Stakeholders felt that these sorts of situations are an inefficient use of time and resource with a significant potential for duplication across regulatory bodies. Consequently, stakeholders across the sector were in broad agreement that having a single regulatory body would be helpful in addressing these sorts of situations and inefficiencies.

It was also noted among some stakeholders, particularly Train Operating Companies, that cross-border operations resulted in what they termed ‘dual regulation’. Essentially, they were referring to the fact that Train Operating Companies are regulated by a separate safety authority in both Northern Ireland and Ireland, with each safety authority undertaking their own programme of audit and inspection. These stakeholders felt that it is important that the work of the safety authorities in both jurisdictions was coordinated as far as possible and that it would

[4] The Health and Safety Authority in Ireland have responsibility for regulating occupational health and safety although typically only conduct inspections alongside CRR.

be worthwhile if the RSA and CRR considered developing a joint inspection programme for cross-border services.

While stakeholders indicated a preference for a single regulatory body, there was a recognition that HSENI was always likely to have some responsibility for occupational health and safety and there would be 'dual regulation' for the foreseeable future. However, there was broad agreement that the role of RSA could be better clarified and supported by appropriate regulation and enforcement powers. There was also widespread agreement that the sector could be more effectively and efficiently regulated with better cooperation and joint working between regulatory bodies.

3.2. Monitoring, compliance and enforcement of Rail Safety

As highlighted in the previous section, regulatory activity, compliance monitoring and enforcement is split across several bodies with RSA, HSENI and ORR having responsibilities, which can overlap, for regulating different aspects of the railway in Northern Ireland. As the mainline Train Operating Companies provide cross-border services, they are regulated in both Northern Ireland and Ireland. This is the main reason for a broad preference to have a single regulatory body in Northern Ireland. With that in mind, the review team explored with stakeholders who they felt should undertake regulatory and compliance monitoring and supervision, the key requirements for undertaking regulatory activity and who should take enforcement action when there is a lack of regulatory compliance, as well as related issues.

3.2.1. Role of ORR, HSENI and the RSA

A number of stakeholders highlighted the confusing picture with regards to the respective roles and remits of those involved in rail regulation in Northern Ireland with RSA, ORR and HSENI involved in audit and inspection activities. At present ORR provide technical advice and support to the RSA to conduct monitoring and supervision activity. In addition, HSENI conduct their own compliance inspection activity. These activities can overlap and the RSA and HSENI endeavour to coordinate their proactive monitoring activities as much as possible.

It was widely recognised by stakeholders that ORR have the technical expertise and a wealth of experience to undertake rail regulation activity in Northern Ireland. However, there are emerging differences between the rail safety legislative framework between NI and GB, and these are only likely to grow in future. This means that ORR inspectors providing technical advice and support are going to be less familiar with requirements in Northern Ireland. In addition, ORR have resource challenges in managing existing workloads and taking on additional responsibilities could be difficult.

Further, it was also noted among stakeholders familiar with the legislation establishing ORR that their powers and jurisdiction do not extend to Northern Ireland. As such it would require primary legislation in Westminster with legislative consent from the Minister for Infrastructure to legislate in this area. This would mean that rail safety regulation in NI would likely have to align very closely with GB. This could be challenging for North-South cooperation and managing any divergence between Northern Ireland and Ireland.

While having access to ORR expertise to support the audit and inspection process would likely remain valuable, there is a mounting need to develop local inspectors that are appropriately qualified and understand our legislative framework to lead the audit and inspection process. This was felt among a number of the local industry stakeholders to be important so as to avoid confusion as they highlighted that many staff view the ORR as the regulator and not DfI RSA.

HSENI have a remit which overlaps the RSA and has enforcement powers across many of the key compliance areas such as safety and market surveillance of railway products. In addition, HSENI have warranted inspectors with clear enforcement powers to issue improvement or prohibition notices and take court action if necessary. However, sectoral stakeholders view HSENI as having extensive and deep expertise in occupational health and safety, but more limited knowledge and experience of the railways. This is in part due to the extensive remit of the HSENI transport team who cover all transport modes in addition to other responsibilities. This means that their inspectors have a general knowledge and experience of railway issues but have perhaps not been able to develop the same levels of expertise as railway inspectors in GB or Ireland. In addition, there was a view across all stakeholders that HSENI, like most public sector organisations, has resourcing challenges and may not be able to take on the additional responsibilities of the RSA role for licensing, certification, authorisation, as well as monitoring and supervision.

There was a view across all stakeholders participating in Phase 3 of the review that the optimal model for Northern Ireland would be for the Department in its role as RSA to appoint inspectors or build its own inspection capacity. However, it is recognised that this would likely need to be more generalist railway inspectors as it was unlikely a small safety authority could obtain and maintain expertise across the full range of railway systems, process, infrastructure and rolling stock.

3.2.2. Northern Ireland railway inspectors

All stakeholders expressed the view that in order for DfI RSA to fully lead on its role as regulator and avoid confusion between DfI RSA and ORR that the RSA should appoint its own inspectors to lead the monitoring and supervision process and undertake audit and inspection activity.

It was pointed out by a number of stakeholders that RSA rely on the availability of ORR inspectors who are working within a safety regime which is diverging from the safety legislative framework that applies in NI. ORR have increasing resources pressures across their pool of inspectors', and it is proving increasingly difficult to gain access to expert teams of 2-3 inspectors to carry out inspections. In addition, stakeholders also felt this would help clarify the distinction between the DfI RSA remit for rail safety and the HSENI remit for occupational health and safety of railway workers, although it was acknowledged there was always likely to be some overlap.

Most stakeholders also emphasised the potential benefits of appointing or developing a small 'generalist' pool of inspectors that are appropriately qualified and have obtained a 'generalist' knowledge of the NI Network that could be supplemented by specialists for certain functions. Stakeholders with experience of the CRR approach to regulation highlighted that they obtain external expertise from the market (e.g. rail vehicle specialists) to support their inspection and authorisation work. Consequently, it was felt that as DfI RSA can draw on ORR, and potentially the market as well, that a small pool of inspectors with generalist local knowledge leading audit and inspection activity represents an appropriate and efficient approach to monitoring and supervision.

Generally, stakeholders felt that DfI RSA inspectors should have the same powers as railway inspectors in GB and Ireland, and Health & Safety inspectors employed by HSENI. In short, there was a general consensus that DfI RSA inspectors should be warranted inspectors with the necessary powers to issue improvement and prohibition powers. While expressing this preference, NI based stakeholders familiar with the current DfI RSA approach to regulatory activity expressed their hope that the current approach with a focus on improvement would continue.

Stakeholders also expressed their views on the potential for developing higher levels of knowledge and experience of both the local railway network as well as inspection activity. Stakeholders from regulators in neighbouring jurisdictions highlighted previous activity undertaken in partnership with DfI RSA to develop knowledge and experience. It was mentioned that for example DfI RSA staff have undertaken shadowing activities with inspection teams looking at signalling, possessions, ballast maintenance and fleet engineering depots, as well as joint activities being undertaken on other networks. In addition, other stakeholders highlighted the joint nature of some training activities being coordinated by Train Operating Companies and other regulators which have been extended to DfI RSA. Generally, it was recognised by stakeholders that the rail sector across the Island of Ireland was small in comparison to other jurisdictions and that joint learning and development benefits all parts of the sector.

3.2.3. Licences & Licence exemptions for organisations working on the railway

An area not initially covered within the question set for the interview, although brought up by a number of stakeholders, was in relation to licensing contractors who work on the network. It was highlighted by some stakeholders that there was a degree of variability in approach to safety, and safety management, by some contractors who work on the NI Network. Some contractors have invested significant time and resources while others had opted to minimise their focus on this. It was felt by some stakeholders participating in interviews that contractors who opted not to invest as significantly as other did so as the investment did not provide a sufficient return on investment. Indeed, some stakeholder participants highlighted the challenge of ensuring that appropriate safety standards were equally applied through the chain of sub-contractors. As a result, stakeholders felt that there was a reliance on the stretched resources of Translink to police the safety practices of contractor organisations.

It was noted by local industry stakeholders that GB has a scheme of licences and licence exemptions under the Railways Act 1993 for contracting organisations who undertake work on the network. It was felt that this could offer a solution to the variability in safety standards among contracting organisation working on the NI Network and the challenges faced by NI Railways to ensure adherence to their own standards. Consequently, some stakeholders expressed the view that DfI RSA could take on a role similar to that which ORR undertake in GB in relation to licences and licence exemptions with powers to inspect the safety management systems of organisations working on the network.

As a result of this suggestion, the current experience of stakeholders in GB and Ireland was explored. Those GB stakeholders pointed out that regulating contracting organisations maintaining the Network does not necessarily increase the safety of those working on the network. In addition, it was highlighted that regulating in such a way is very prescriptive and can result in barriers to market entry or sustainability of contracting organisations. This can have the consequence of restricting the market to smaller numbers without having any positive effect on worker safety.

Stakeholders familiar with the market for railway contracting organisations in Ireland indicated that the Infrastructure Manager is responsible for approving contractors to work for them. Currently CRR do not have a remit for assessing contractor competency to work on the network. This is an open issue and some stakeholders familiar with the situation in Ireland indicated that some parts of the sector would prefer for CRR to have a mechanism to ensure contractors are appropriately competent to work on the network.

While some stakeholders indicated a preference for DfI-RSA involvement in ensuring contractors are appropriately competent to work on the network, it was broadly recognised that there is a small pool of contractors and that whatever action is taken

it is important that the market is not restricted further. It was noted by a small number of NI based stakeholders that Translink are taking immediate action on a voluntary basis to try and increase the safety standards among their contractors and sub-contractors.

3.2.4. Dual regulation

A number of interviewees employed in Railway Undertakings' roles highlighted an increasing area of concern regarding dual regulation. Specifically, the financial, resource and administrative burden of regulatory activity in Northern Ireland and separately in Ireland by the respective NSAs.

These stakeholders explained that prior to EU Exit, both Translink and Irish Rail held one Part-A Certificate to certify their organisation (recognised in all EU jurisdictions) and two Part-B Certificates (one each for Northern Ireland and Ireland) to certify their SMS for the routes they operate in each member state. In addition, it was pointed out that regulatory activity was undertaken by a single NSA for the respective jurisdictions as a result of a 'gentlemen's agreement' by the Heads of each NSA dating back to the mid-2000s. This meant that DfI-RSA undertook regulatory activity on Translink while the Irish Rail Regulator (the CRR) regulated Irish Rail. The RU stakeholders interviewed also highlighted that prior to EU-Exit authorisations and approvals, particularly for vehicles, were mutually recognised, and also licences and certificates were mutually recognised.

Since EU-Exit, interviewees employed by Railway Undertakings highlighted that they were now required to hold safety certification in both jurisdictions and that licences, certificates, authorisations and approvals were no longer mutually recognised. In addition, they indicated that they were subject to regulatory activity in both jurisdictions and that there had been a significant growth in the amount of regulatory activity since EU-Exit Day with one interviewee indicating that the Irish Rail Regulator has scheduled one regulatory event each month for 2024. This is in addition to regulatory activity scheduled by DfI-RSA as well as HSENI inspections.

One interview explained that the level of regulation had resulted in a staff cohort emerging that worked almost exclusively on managing regulatory activity. Further, due to the level of regulation these staff were unable to work on implementing the recommendations contained in reports produced by the respective NSAs. In terms of costs, between staff and resource requirements to manage regulatory activities and implement recommendations, that this was running into the millions of pounds/ euros. Senior managers in some stakeholder organisations felt that their organisations were finding it increasingly difficult to sustain the level of support required to meet the regulatory burden.

In order to better manage the regulatory burden and align the necessary resources to meeting these requirements, a number of stakeholders interviewed expressed a

preference for greater coordination between NSAs in each jurisdiction to minimise the potential for duplication of regulatory effort. Further, some stakeholders raised the prospect of a joint programme of inspection by the two NSAs on Railway Undertakings that operate cross-border services. It was felt that this could streamline the process and minimise the regulatory burden of those Railway Undertakings while enabling each NSA to fulfil their regulatory obligations.

It is worth noting that the views expressed by stakeholders during the interview process are based on their experience of the EU regulatory framework as it applied in member states prior to EU-Exit. In the main, this does not take into account the 2016 recast directives on safety and interoperability which was not implemented in Ireland until October 2020 and was not implemented in NI until after the Windsor Framework was agreed in 2023. Consequently, many of the changes that have occurred are either as a result of different safety regimes caused by divergence post EU-Exit or in the case of interoperability would have occurred anyway. In short, at an EU level mutual recognition has been replaced by jurisdiction of an EU institution. This applies in NI and Ireland in relation to interoperability, while in relation to safety mutual recognition of safety certification of railway undertakings is not possible. This would require an amendment to the Windsor Framework and would provide ERA jurisdiction over this aspect of the safety regime. In terms of both NSAs conducting regulatory activity, this is something which should always have occurred and was legislated for in EU regulation but was not implemented due to a ‘Gentlemen’s Agreement’. However, the 2016 regulation that establishes the European Union Agency for Railways (ERA) has meant that it would not have been possible to continue with such an arrangement as the Irish Rail Regulator is required to demonstrate to ERA how each railway operator is regulated (this includes Translink), and this is audited at least once in each Directorial period (i.e. 5-years).

3.3. Financing and Resourcing Rail Safety Regulation

As highlighted in the Phase 2 report, RSA as a branch within a Government Department is funded through normal 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. Both DEL and AME are ultimately funded through the proceeds of general taxation across the UK. There is no funding from industry through levies although there is the potential to charge fees for some regulatory activities such as authorisations and approvals in the role of Competent Authority for Interoperability. This is unlike rail regulation in GB which is fully funded from industry while in Ireland there is a mix of industry and government funding streams.

3.3.1. Current funding model

There was a recognition by all stakeholders participating in interviews that current funding levels for rail regulation were not sufficient and did not provide the required level of resources for either the regulator or railway operators. Both railway operators (Translink and Irish Rail) receive government funding in addition to the fare box and the costs of rail regulation are not separated out into reporting lines. As such, the precise costs of rail regulation are unclear. In both organisations, safety maintenance costs should be met from the resource budget which is under significant cost pressures with the resource budget not increasing at the same rate as capital investment. Interviewees from railway operators indicated that this has had two important effects, firstly; the costs of a number of safety critical maintenance projects have been met from capital funding, and secondly; there is a lack of funding for staff resources in safety roles to manage engagement with rail regulators.

In terms of the capitalisation of safety maintenance activities, stakeholder interviewees indicated this has a number of implications. The most significant implication of capitalising maintenance funding is the ongoing risk that economic challenges could result in the capital funding stream being curtailed or significantly reduced which would create a backlog of maintenance activities that railway operators that would be difficult to clear. Next, regular maintenance activities are increasingly being delivered by contractors rather than by the railway operator's own employees. Some interviewees felt that safety maintenance activities being delivered by contractors' risks skills fade among their own staff making it more difficult to bring this work back in-house in future. Finally, a number of Railway Operating Company interviewees again highlighted that contractors are not regulated by the NSA but rather their safety performance is monitored for compliance by their own staff. As the resource budget for these staff has not increased at the same rate as capital investment it has become increasingly difficult to effectively monitor safety performance and root out poor practice.

Closely related to this issue is funding for staff resources to engage with rail regulatory activity. In addition to those staff who monitor the compliance of contractors with safety standards, it is also challenging for railway operating companies to ensure they have the appropriate staff available to engage with rail regulators. It was highlighted by interviewees from all Railway Operating Companies participating in interviews that typically it is many of the same staff engaging with regulators for each audit or inspection. Stakeholders from these organisations reasoned that they would need additional funding and resources to be able to manage the current levels of regulatory activity.

While most stakeholders felt that additional funding and resources would be required, they equally acknowledged that it would still be challenging to increase staff numbers in these areas. Almost all stakeholders highlighted the challenges they had experienced in trying to recruit appropriately qualified staff. Interviewees from

rail regulators in neighbouring jurisdictions (GB and Ireland) highlighted that they had great difficulty in recruiting new inspectors and safety specialists with railway experience as similar industry positions have considerably higher salaries. At the same time, Railway Operating Companies indicated that they had similar issues recruiting as the industry in GB and Europe also have higher salaries. This has made it difficult to recruit, develop and retain expertise.

As such, it was generally felt that all organisations required greater funding and resources in order to adequately deliver their responsibilities vis-a-vie rail regulation. However, there was no consensus on where this money should be found. The current situation for funding in NI was felt to no longer be adequate. As highlighted above, all funding for rail regulation in NI comes from the block grant. Interviewees felt that this perhaps had been appropriate when Translink were the only mainline operator with a few joint services run by Irish Rail, and with similar arrangements in Ireland. However, as Translink now pay an annual levy in Ireland and there are an increasing number of operators on the mainline in NI it was felt that funding rail regulation in NI entirely from the block grant was no longer fair nor equitable. Overall, interviewees felt that it most likely that any increased funding allocations in relation to rail regulation would come from the fare box and government grants to railway operating companies.

3.3.2. Safety levy and fees

Some stakeholders in the local sector identified that the gap between funding and costs needs to be correlated with all those using the network, as well as those working on the network, having a responsibility to contribute to the cost of regulation. Interviewees from NI based stakeholders pointed to the funding models in neighbouring jurisdictions as potential solutions that would potentially better reflect the distribution of funding responsibilities. Stakeholder interviewees from neighbouring jurisdictions provided an overview of their respective models and how they operate.

Interviewees form the Irish Rail Regulator explained that they receive 75% of their funding from an annual safety levy, and fees and charges for interoperability authorisations with the remainder being allocated as grant-in-aid from the Government Department. The individual levy for each operator is calculated based on the share of the total cost of rail regulation in Ireland which is then set by a Statutory Instrument laid in the Dáil (the lower house of the Irish Parliament). To ensure value for money and that the Irish Rail Regulator is adequately discharging its statutory functions they are scrutinised by Committees in the Irish Parliament, the Irish Comptroller and Auditor General as well as the European Union Agency for Railways. Interviewees based in Ireland felt that this approach was transparent and ensured value for money.

Stakeholders from the GB Rail Regulator and Department for Transport explained that funding for rail regulation in GB was 100% funded from industry through an annual safety levy and fees and charges related to interoperability authorisations. The individual levy is based on turnover with all operators with a £10m+ turnover paying 0.1% of reported turnover in a safety levy. Like their Irish counterparts, interviewees from the GB rail regulator explained that they were subject to scrutiny from the UK Parliament, as well as the National Audit Office. Although the GB rail regulator was no longer subject to audit from the European Union Agency for Railways (ERA), they had previously been audited by ERA. Interviewees based in GB indicated that they felt the funding model was broadly fair and equitable. Further, one interviewee highlighted that some railway companies paying the levy felt that it ensured the independence of inspectors and was cost effective in contributing to their continuous improvement.

The safety levy and authorisation fees were felt by locally based stakeholders to represent a proven funding model for rail regulation in distributing the cost burden across those using the network and subject to regulation. Further, interviewees in railway operating companies were familiar with the Irish model as it applied to their organisation with a number of interviewees familiar with the GB funding model having worked in the industry in GB. It was also noted by some stakeholders that the interoperability authorisation fees could quickly be absorbed as a cost line in business cases for capital investment and thus could be introduced quite quickly and managed effectively.

3.3.3. Future funding

While it was widely recognised that more funding was necessary and that the funding model for rail regulation in NI could be more equitably distributed across railway operating companies, a small number of interviewees highlighted that the costs had to be economically viable for the sector. In other words, rail regulation and the funding of rail regulation had to be proportionate to the size of the network. Further, these interviewees also felt that there was an inherent contradiction between the costs of meeting the legislative requirements as they are set out and the economics of a small rail network. It was put by one interviewee that the NI rail network does need gold standards in terms of regulation.

In contrast, other interviewees identified that there are some inescapable costs of regulation regardless of the size of the network with larger networks benefitting from economies of scale. It was felt by these interviewees that the costs of regulation were part of doing business and had to be absorbed while acknowledging that there was not a bottomless pot of money available for regulatory activity. Nevertheless, the benefits of regulation in terms of improving practice and prioritising investment were being realised locally.

It was also recognised that the partnership between DfI-RSA and regulatory partners such as HSENI, ORR and CRR were benefitting rail regulation in NI with minimal cost burden on the Department. It was felt that the partnerships with HSENI and ORR were potentially delivering their maximum and that without additional funding and resource for DfI-RSA to take on more of the burden that the quantity and quality of rail regulation at its current level may not be sustainable due to resource pressures in those partner organisations. In addition, without investment in DfI-RSA resources it was felt that it would be challenging to fully profit and realise the advantages of the partnership with CRR particularly in streamlining the regulatory burden on railway operators across the Island of Ireland.

Overall, it was felt that there needed to be additional finance and resources for rail regulation but at a manageable level for the sector with an equitable distribution across all those using the network. Further, it was felt that it was important that the regulatory burden on finance and resources could be better streamlined through more effective cooperative efforts by regulators.

3.4. Engagement / co-operation with stakeholders

The current levels of engagement between DfI-RSA and stakeholders was identified in previous sections of this report as an area of positive practice which has ensured that the sector has access to information, guidance and decision-makers to help navigate through the challenges of safety regulation, interoperability authorisations and train driver licensing. While the change in approach over the last few years has been seen as a positive, questions focussed on the potential tensions between the role a Government Department has with respect to policy and legislation versus the role a regulator has with regards to compliance and enforcement.

3.4.1. Challenges with current arrangements

A number of stakeholders recognised the innate challenge for the DfI-RSA team in trying to engage with the sector on policy and legislative issues while at the same time conducting investigations into potential non-compliances that could lead to enforcement action. This was considered by some stakeholders to present a challenge due to the fact that very often it is the same people involved in regulatory activity but also providing expert input into policy consultations. A small number of stakeholders felt that there is a low-level risk that this could become more challenging were DfI-RSA to obtain greater enforcement powers. It was also pointed out that these relationships have added complexity where DfI-RSA engage with Departmental counterparts that have responsibility for funding Translink. Despite these potential tensions it was felt necessary by all stakeholders for the DfI-RSA team to engage with the sector across the full spectrum of its current remit.

Railway operating companies in particular were keen to emphasis the need for continued, and perhaps enhanced, engagement with DfI-RSA across the range of responsibilities. These organisations in particular were keen to highlight the importance of having access to the right people at the right time to obtain pragmatic support from the Department to help them through the requirements of safety regulation, interoperability authorisation or other important rail policy issues. In order to ensure that the sector had access to the right people in DfI-RSA at the right time, some stakeholders suggested that having greater clarity around the role of regulatory bodies (such as DfI-RSA, HSENI and ORR) vis-a-vie the role of DfI as Government Department would be helpful, even if on some occasions it was the same person fulfilling the requirements of different roles. Some stakeholders felt it was the lack of clarity around responsibilities that adds to any potential tension between roles.

3.4.2. Engagement structures for all-island cooperation

One railway operating company raised a specific issue which they felt would be challenging to address through the current range of engagement mechanisms with Government, Regulators and the wider sector. Interviewees from this organisation highlighted their concerns around the current lack of rules or regulations on the use of mobile electronic devices in the driving cab of a train, particularly when in motion. Interviewees pointed out that regulations around use of electronic devices in the driving cab of a train would be most effective on an All-Island basis to ensure consistency across jurisdictions.

Interviewees reflected that having different rules in different jurisdictions would only create confusion and could potentially complicate enforcement on cross-border services. Interviewees indicated that they felt the current structures for engaging on these sorts of issues, which are arguably best dealt with on an all-network basis, do not exist on an All-Island basis. Rather, at present issues such as banning the use of electronic devices in the driving cab of train in motion would likely require separate engagement with Government Departments and Regulators, and again in each jurisdiction. In order to deal with issues such as this, some stakeholders have suggested that it may be helpful to consider establishing new engagement structures that operate on an All-Island basis and would involve both Government, Regulators and the wider rail sector operating on any part of the Ireland/ Northern Ireland network.

3.4.3. Stakeholder groups not currently engaging with DfI-RSA

Other stakeholders interviewed highlighted a current potentially interested party that does not engage directly with DfI-RSA on either policy and legislation or regulatory matters; namely, rail passengers or rail passenger's representative bodies. Those

stakeholders interviewed representing Government Departments or rail regulators in other jurisdictions highlighted the work they do in engaging with passenger's representative bodies. In Ireland, there is the Rail Users Group which represents rail passengers and engages directly with CRR and DoT on a range of railway issues. In GB, Transport Focus is an umbrella body that has been set up to bring together passenger representative groups across different modes to represent passenger concerns to Government and regulators. ORR, the GB Rail Regulator, regularly engages with Transport Focus and recently they have completed a joint project on improving the passenger experience during stranded train events.

While interviewees from regulatory bodies highlighted this aspect of their work, those was not raised by any local stakeholders who represent rail operating companies. It should be noted that the General Consumer Council (the body who engages directly with public transport passengers in NI) was not involved in the review process. As such, it may be worthwhile engaging with them in future to examine the potential benefits of direct engagement with passenger groups. During the interview with HSENI they did however highlight their direct contact with rail passengers through their notification and complaints handling processes where rail passengers can highlight safety issues. These issues are shared with DfI-RSA and have led to inspection activity such as the joint platform-train interface inspections which occurred in 2023 and 2024. Overall, it may be helpful to examine how passengers can highlight safety issues directly to DfI-RSA.

3.4.4. Engagement with international partners

Interview participants from other jurisdictions participating in Phase 3 of the review highlighted the challenges of engagement with international partners such as ERA or OTIF (Intergovernmental Organisation for International Carriage by Rail). Interview participants from the Irish Rail Regulator explained that there is significant engagement with ERA through a number of groups and networks that they participate in. While many of these meetings offer hybrid attendance, there are many events and training sessions which have to be attended in-person, especially given the need to fulfil obligations to support ERA's jurisdiction for certain regulatory functions they deliver in Ireland. This creates considerable challenges for a small organisation to participate fully while maintaining a consistent regulatory presence across their network.

Interview participants offering a GB perspective explained that in the post EU-Exit environment, they participate directly in OTIF groups to ensure continued acceptance of GB rail traffic into Europe and beyond. OTIF is more focussed on the policy and legal framework to support international rail traffic. As such, this results in more involvement from Government rather than regulators although they are still closely involved through the industry groups which feed into government. Nevertheless, interviewees from the GB rail regulator explained that they have

focussed on obtaining observer status on ERA groups to ensure they fully understand ongoing developments in the EU and enable them to advise those train operating companies that have services travelling through the channel tunnel.

During discussions with stakeholders, the unique NI position where we are obliged to follow EU rules for interoperability but not for safety was discussed. It was highlighted that this puts NI in a challenging position in having to understand and participate in ERA groups particularly in relation to interoperability while also having to observe the work of OTIF to understand ongoing developments related to safety regulation with respect to cross-border rail traffic. In essence, this means that DfI-RSA has a more extensive breadth of engagement requirements then either Government Departments or Regulators in neighbouring jurisdictions. While DfI-RSA does not have the resources to engage at the same levels as either, it is was felt vitally important by local stakeholders that this engagement occurred as much as possible to ensure DfI-RSA could properly advise local stakeholders and help them meet their obligations.

3.5. Impact of Government plans for railways on rail regulation

A short time before the interviews for Phase 3 commenced, there was a joint publication by the Irish Government and Northern Ireland Executive of the All-Island Strategic Rail Review (AISRR). Consequently, a number of stakeholders discussed the potential impact this could have on rail regulation. There was a sense that the potential for freight returning to the network could present several challenges for regulation. Additionally, the plans for a major extension of the network with several new routes would be challenging both for the Department more broadly in terms of all the teams who engage with the sector and specifically in terms of workload for DfI-RSA. In particular, it was felt that it would be a challenge in terms of the interoperability requirements and that these would likely require a focus on technical standards.

3.5.1. Rail freight

It was highlighted during a number of interviews with stakeholders that rail freight has not operated on the Northern Ireland network since 2007. Following the end of these operations the infrastructure to support these services has been disposed of and the network has not been maintained to freight standards. It was pointed out by some stakeholders that significant investment would be required to re-establish the necessary facilities in order to carry freight on the NI Network.

During the interviews it also emerged that the NI legislative framework to support rail freight has not kept pace with GB or EU regulations. As such, a potentially considerable legislative programme may be required to ensure regulatory alignment

across the Island of Ireland to facilitate freight movements. In addition, the industry standards framework in NI has been allowed to lapse as no freight was carried on the network. As such, significant work on technical standards and rules would be required to ensure any freight operators fully understood these requirements prior to operating services.

Stakeholder interviewees based in Ireland indicated during their interview that they were aware of potential interest from freight operators in commencing services within the next 2-3 years on the Dublin-Belfast route. Similarly, interviews with industry stakeholders in NI revealed that they were aware of interest from large organisations based in NI who were keen to move significant proportions of their freight movements from the road to rail within the next few years in order to reduce their carbon emissions. While the interviews highlighted the short-to-medium term interest in exploring the possibilities of freight both from the rail sector in Ireland and the private sector in NI a number of legal and regulatory challenges remain, as well as the financial and technical challenges of upgrading the network and developing the necessary infrastructure.

In terms of the legal and regulatory challenges, stakeholders based in either jurisdiction highlighted the importance of coordination between Government Departments and Regulatory bodies. Further, it was also felt important that there was broad alignment in terms of common industry standards for freight and competencies for freight operators. It was broadly acknowledged among stakeholder interviewees that the TSIs that cover rail vehicles, including wagon, as well as the impact of freight (such as noise) would apply cross-border. However, it was also understood that the freight TSI have much more open-points and specific cases which would mean developing technical rules that support the TSI framework. In addition, stakeholders in both jurisdictions again identified that the safety regimes have begun to diverge and that this would need to be managed to minimise the obstacles to commencing rail freight services.

3.5.2. Major network extension

Most stakeholders indicated that the proposed network extension in the AISRR presented a potentially even greater issue for rail regulation than the reintroduction of freight. The full implementation of the recommendations in the AISRR would likely double the total track miles on the NI network, deliver at least 6 new stations and upgrade several more, and introduce (discontinuous) electrification across the network. This has implications for the workforce and supply chain, access to expertise (for both the Infrastructure Manager and Regulator), competence requirements for railway inspectors, as well as the need for cross-border cooperation as the AISRR trebles the number of cross-border routes.

It was pointed out by several stakeholder interviewees, including some GB participants, that Translink rely on access to the wider GB rail workforce to deliver their current capital investment programme as well as for some maintenance work. Given the scale of the possible investment, stakeholders felt there was considerable potential for this to continue and expand in future. Recent experience has identified the challenges of managing contractors who are not familiar with the network and some of the issues were covered in section 3.2.3 on licensing contracting organisations. This included concerns around a lack of familiarity with the NI network was around safety as the GB workforce do not have network knowledge or experience nor are the familiar with the NI Railways rule book. In addition, some stakeholders from the local sector expressed concerns around some of the current organisations operating on the NI network and their investment in safety (knowledge and competence) as this is perhaps not prioritised to the same extent as other issues in the tendering process. At the same time, some stakeholders from Railway Operating Companies expressed a view that it is already incredibly challenging to monitor and supervise the safety practices of contractor organisations working on the network and this would be increasingly difficult given the level of proposed investment. Consequently, the scale of the proposed extension of the network would be a significant challenge for DfI-RSA in undertaking inspection activity of the ongoing work as well as engaging with Translink and the various project teams delivering the work. It was widely acknowledged by stakeholders that DfI-RSA is not currently resourced to deliver the required level of audit and inspection activity and subsequently authorise new/ upgraded infrastructure and/ or vehicles into service. Nevertheless, stakeholders from local NI based contracting organisations expressed the view that there was a broader economic opportunity to invest in the wider rail sector and help grow local organisations while also fostering their investment in safety. They felt this would improve safety standards on the NI network while at the same time ensuring there is access to local expertise in the range of skills required to deliver the various projects in the AISRR.

Interviewees from ORR highlighted the issues they experienced with the High-Speed 2 (HS2) network which reflect some of the concerns about the ability of DfI-RSA as the regulator to manage the scale of the work outlined in the AISRR. They explained that GB has only a small high-speed network mostly between London and the Channel Tunnel and as such, there is limited expertise in both the rail sector in GB and in ORR itself. This was felt to present a challenge in monitoring and inspecting safety as the HS2 network is built, as well as authorising into service on completion of each section of the new network. In order to better manage their supervision of the project, ORR recruited a specific team that would consider the various aspects of the project from safety by design, through to the build and eventually the authorisation process. ORR interviewees highlighted that safety by design issues need to be considered over the longer term and include the build as well as maintenance of the infrastructure. They went on to explain that this has been made more complex than it could otherwise have been due to the decision-making by fund holders and the

impact this has had on design criteria. In addition, there have been challenges for ORR during the design and early part of the build, as a result of split responsibilities for enforcement between ORR and HSE. ORR interviewees highlighted the importance of building relationships between regulators where there is an overlap in responsibilities. As a result of their experience with HS2, ORR interviewees felt that the AISRR could have the potential to inundate DfI-RSA with the quantity of work involved in the proposed changes.

Almost all stakeholders interviewed indicated that DfI-RSA would require access to a range of experts and investment in the competence of their inspectors in order to be able to monitor and inspect the range of works proposed, as well as authorise the range of new/ upgraded infrastructure and vehicles proposed in the AISRR. Currently DfI-RSA have agreed access to ORR expertise for audit and inspection, and authorisation, across the full range of safety and interoperability requirements. However, the scale of work to deliver the AISRR and resourcing challenges for ORR will make it difficult to continue to rely on the availability of ORR inspectors. In interviews with CRR stakeholders, they explained that from time to time they bring in expertise from the market to support their authorisation work. Some stakeholders felt this would be necessary to supplement the current arrangements with ORR.

In addition, stakeholder interviewees from the GB and Irish Rail regulator highlighted the range of educational opportunities open to DfI-RSA to develop internal knowledge, skills and competence to undertake this work. ORR require inspectors to hold a NEBOSH Diploma in Health & Safety before they can undertake audit and inspection work. Both regulators supplement this training with support for their inspectors to obtain post-graduate level qualifications in railway systems and safety. One CRR interviewee detailed the investment their own organisation had put in place by facilitating their access to a Masters' level programme at Aston University. They felt that this educational opportunity had proved very effective in supporting them in their work in relation to both safety and interoperability.

Given the extent of the implications for the network across the Island of Ireland, there was a broad view that it would require coordinated and joint activities across all railway stakeholders throughout Ireland and Northern Ireland. Stakeholders with experience of delivering cross-border projects suggested that consideration needs to be given to the appropriate structures for delivery, from overall governance to project boards, technical and standards groups, and joint regulatory structures. Among some stakeholders it was felt that it would require coordinated and joint action across all aspects that would be impacted by the review in order to deliver the desired outcomes. Among a small number of stakeholder interviewees, there was a view that there should be joint regulation when implementing the AISRR whether it is safety or interoperability. While joint regulatory activity on specific cross-border projects would likely form part of cooperative activity between DfI-RSA and CRR, joint regulatory activity would be much more challenging for divergent safety regimes and an interoperability framework that focusses on vehicles that operate cross-border.

Nevertheless, it was acknowledged that work could be undertaken to support convergence of the standards that support the interoperability framework which would have the potential to yield significant benefits in AISRR projects even if they are subject to ‘dual regulation’ and authorisation processes.

3.5.3. Technical standards convergence

All stakeholders were in agreement that there needs to be convergence in the technical and industry standards which apply to the network across the Island of Ireland to support the delivery of the AISRR. There was a sense among almost all stakeholders that without convergence in standards there is a risk of adding unnecessary costs to the design, build, operation and maintenance of the network as the projects proposed in the AISRR come online. In addition, there was a feeling among most stakeholders that there is an increased risk around the safe integration of new infrastructure without convergent standards. Some stakeholders cited electrification of the network as an example of where divergent standards will add cost to these projects. The DART+ network in Ireland is already mostly electrified using 1500v DC OLE (Overhead Line Equipment) electrification and will be completed using this system whereas the AISRR proposes 25kvh AC OLE electrification for the intercity network across the Island of Ireland as it is more cost effective. This adds project costs for multiple electrification systems, particularly for vehicles which would be required to operate across different modes. While this is not new technology, it does add cost. In addition, there are safety risks at the interface between modes of electrification where pantographs are deployed.

It is for this reason that those stakeholders most closely involved in delivering the projects outlined in the AISRR suggested that there should be appropriate structures to support the development of convergent industry standards across the Island of Ireland. It was felt by many stakeholders that this would help to drive down costs and avoid duplication of effort across projects. With this in mind, stakeholders based in both jurisdictions felt that there was political will in both administrations that would support efforts to encourage convergence on standards. In fact, the majority of stakeholders went on to highlight the importance of both administrations, rail regulators, infrastructure managers, all railway operating companies and the wider sector’s involvement in any structures set up to work towards convergent standards for the sector. Nevertheless, it was pointed out that the drive towards convergence in standards should not forget the requirements of maintaining the existing network with two interviewees highlighting the importance of incorporating the historic standards regime to ensure there were no safety issues around compatibility with existing legacy systems on both networks.

At this stage, interviewees from Railway Operating Companies took the opportunity to again raise the issue of ‘dual regulation’ and suggest that the work on convergent standards would be a useful opportunity to look at the potential of joint regulatory

activity towards potentially a single rail regulatory body that would cover both Ireland and Northern Ireland. It was pointed out that Departmental decisions are often more concerned about cost and not necessarily standards. This means decisions made by RU's and agreement between CRR and DfI-RSA as regulators on standards would help the sector deliver the AISRR. As such, some stakeholders felt that the interface between CRR and DfI-RSA could provide scope for joint inspection, joint authorisation and eventually a single regulatory body.

4. Summary & Conclusions

4.1. Summary & Conclusions 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 commenced with identifying the key stakeholders across the sector in Northern Ireland as well as potential stakeholders in neighbouring jurisdictions who would potentially be affected by any changes to the rail safety regulatory framework in Northern Ireland or who would have an interest in any changes. Prior to commencing the interviews, the review team developed a consistent question set to ensure the interviews obtained the required data from participants. While it was important to have a consistent question set, the interview protocols which were developed ensured the interviewer had sufficient flexibility to enable interview participants to discuss issues of importance to them and ensure no avenues of potential learning were missed. The 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, DfI-RSA 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 interviewees, 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 DfI-RSA 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 and ORR (on economic regulation) would help to mitigate some of these costs and could potentially reduce 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 DfI-RSA, 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 also that DfI-RSA 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.

In order for DfI-RSA to be fully capable to lead on the rail regulatory function, and remove the current confusion, stakeholders felt that DfI-RSA 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 DfI-RSA 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 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 a 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, DfI-RSA is entirely funded through normal 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 in how the industry is regulated across the Island, there was a recognition 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. In order 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 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 was 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 in order 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 DfI-RSA 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 DfI-RSA has greater enforcement powers. Some stakeholders thought this could potentially discourage the sector from engaging with DfI-RSA 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 considered the most likely 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 particularly occurred between DfI-RSA and any local passenger representative bodies as they would typically engage with the General Consumer Council. This is something which is beyond the scope of the Rail Safety Review, although may be worth exploring in more detail.

In addition, the unique NI position 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 frameworks for cross-border rail transport. This means that DfI-RSA has a more extensive breadth of engagement requirements then either Government Departments or Regulators in neighbouring jurisdictions. While DfI-RSA does not have the resources to engage at the same levels as either, it is was felt vitally important by local stakeholders that this engagement occurred to ensure DfI-RSA 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 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 DfI-RSA in terms of capacity and capability in its role as Competent Authority for Interoperability to firstly authorise into use 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, DfI-RSA 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 likely to diverge 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 DfI-RSA 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 DfI-RSA 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 in order 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.

4.2. 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.

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 whether or not legislation is required to implement the policy.