Summary: Intervention and Options

<table>
<thead>
<tr>
<th>Cost of Preferred (or more likely) Option</th>
<th>RPC: RPC Opinion Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Net Present Value</td>
<td>Business Net Present Value</td>
</tr>
<tr>
<td>NQ</td>
<td>NQ</td>
</tr>
</tbody>
</table>

What is the problem under consideration? Why is government intervention necessary?
There are a number of provisions in the current regulatory framework for UK railways (governed by the Railways Act 1993 as amended by the 2005 Railways Act). The focus on the existing railways could potentially cause considerable cost and delay to HS2 Phase One. The Hybrid Bill to bring forward HS2 Phase 1 therefore includes provisions to support the delivery of the project, including some additions, modifications and disapplications of current legislation similar to legislation passed for Crossrail. For example, the closures process specified in the 2005 act requires proving disuse or underutilisation which would effectively duplicate the parliamentary debates on closures in the case of the Hybrid Bill.

What are the policy objectives and the intended effects?
The policy objectives are to:
- remove obstacles that might cause delay to the HS2 project, some of which arise due to existing legislation. These deregulatory ambitions can be achieved without any adverse impact on competitors or the public; and
- set up a mechanism for the developer of HS2 to reach agreements with other operators where respective economic interests have an impact on the development of the project

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
Option 0 (Do nothing) – In this scenario, the current legislative regime for railways would remain in place. The HS2 project would be at risk from delays arising from the normal development of the existing network, from other operators seeking opportunistic profits from HS2’s urgency, and from conflicts between the existing process for closing railway assets and the planned route once approved by Parliament.

Option 1 (Preferred) – Legislation is brought forward within the HS2 Phase One hybrid bill to address requirements set out in earlier, primary legislation, which would remove some of the possible causes of delay without damaging the interests of the public and other operators.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 03/2018

Does implementation go beyond minimum EU requirements? N/A

Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.

<table>
<thead>
<tr>
<th>Micro</th>
<th>&lt; 20</th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

What is the CO₂ equivalent change in greenhouse gas emissions? (Million tonnes CO₂ equivalent)

Traded: n/a
Non-traded: n/a

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: Date: 25/10/13

Policy Option 1

Summary: Analysis & Evidence

Description:
### FULL ECONOMIC ASSESSMENT OF POWERS RELATING TO RAILWAY MATTERS IN THE HYBRID BILL (THE PREFERRED OPTION)

<table>
<thead>
<tr>
<th>Price Base Year 2013</th>
<th>PV Base Year 2013</th>
<th>Time Period Years</th>
<th>Net Benefit (Present Value (PV)) (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>10</td>
<td>Low: NQ</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>High: NQ</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Best Estimate: NQ</td>
</tr>
</tbody>
</table>

#### COSTS (£m)

<table>
<thead>
<tr>
<th></th>
<th>Total Transition (Constant Price)</th>
<th>Average Annual (excl. Transition) (Constant Price)</th>
<th>Total Cost (Present Value)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>NQ</td>
<td>NQ</td>
<td>NQ</td>
</tr>
<tr>
<td>High</td>
<td>NQ</td>
<td>NQ</td>
<td>NQ</td>
</tr>
<tr>
<td>Best Estimate</td>
<td>NQ</td>
<td>NQ</td>
<td>NQ</td>
</tr>
</tbody>
</table>

**Description and scale of key monetised costs by 'main affected groups'**

None. It has not been possible to make robust, evidence-based estimates of the costs that would be incurred by the affected groups (including Network Rail, the Rail Regulator and Train Operating Companies), as these arise mainly through the possible extra administrative burden on existing railway operators of having additional dealings with HS2's developer within the remit set out in the bill, beyond the relationships that they would already have to have with HS2's developer if these clauses were not included (see p. 6).

#### Other key non-monetised costs by 'main affected groups'

- Rail regulator - Additional administrative burden in facilitating the delivery of HS2.
- Network Rail - Additional administrative burden in working with HS2 during delivery.
- Network Rail - Potential delay to track maintenance or more costly maintenance due to track possessions at more costly times (due to compensation for train operators).
- Train Operating Companies - Additional administrative burden in working with HS2 during delivery.

#### BENEFITS (£m)

<table>
<thead>
<tr>
<th></th>
<th>Total Transition (Constant Price)</th>
<th>Average Annual (excl. Transition) (Constant Price)</th>
<th>Total Benefit (Present Value)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>NQ</td>
<td>NQ</td>
<td>NQ</td>
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<tr>
<td>High</td>
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<td>NQ</td>
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<tr>
<td>Best Estimate</td>
<td>NQ</td>
<td>NQ</td>
<td>NQ</td>
</tr>
</tbody>
</table>

**Description and scale of key monetised benefits by 'main affected groups'**

#### Other key non-monetised benefits by 'main affected groups'

- HS2 scheme – fewer, shorter delays arising from elongated or duplicate disputes with the railway industry.
- HS2 scheme – not blocked by failure to meet the criteria for closures.
- HS2 Operator - Saving in not having to apply for a licence from ORR until the scheme opens.

#### Key assumptions/sensitivities/risks

- Discount rate (%) 3.5

### BUSINESS ASSESSMENT (Option 1)

<table>
<thead>
<tr>
<th>Direct impact on business (Equivalent Annual) £m:</th>
<th>In scope of OIOO?</th>
<th>Measure qualifies as</th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs: NQ</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>Benefits: NQ</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net: NQ</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Evidence Base

Background to HS2

The UK rail network is getting more congested and forecasts suggest that demand for rail travel will continue to grow (see for example January 2012 Economic Case for HS2 and the associated modelling reports1). The UK requires a step change in its rail capacity, particularly for intercity travel between our largest urban areas. To tackle the issue of congestion on the railways and to drive economic growth, and following a five-month public consultation, in January 2012 the DfT stated its intention to take forward work to deliver a new national high speed rail network (known as High Speed 2 (HS2)).

The scheme will be delivered in two phases:

- Phase One would connect London and the West Midlands with a high speed line as well as a link to the Continent via High Speed 1 (HS1). It would also provide a connection into the West Coast Main Line just north of Birmingham to enable services to continue north west at conventional speed; and

- Phase Two would build on Phase One to create a Y-shape extending the high speed network to Manchester on the western arm and to Leeds on the eastern arm. It would also connect into the West Coast Main Line (north of Manchester) and into the East Coast Main Line (north-west of Leeds) to enable services to continue north at conventional speed.

To deliver the scheme, the Government must obtain the necessary powers and considers a hybrid Bill the most efficient means of achieving this (as the scheme affects both public and private interests) as the method is tried and tested for delivering significant infrastructure projects (for example Crossrail and HS1). It will allow the consideration by, and debate in, Parliament that a project of this scale deserves, and, importantly, enables those affected by the scheme to directly petition a special Parliamentary Select Committee to seek amendments to the scheme or additional compensation (akin to a planning enquiry). The Government will deposit the hybrid Bill for Phase One of HS2 by the end of 2013.

Introduction to railway regulation

The railways in the UK are a regulated industry and are principally governed by the Railways Act 1993 (as amended by the Railways Act 2005) and the Railways Infrastructure (Access and Management) Regulations 2005 (as amended). The Act and Regulations together set out the role of the operator and the process of regulation and therefore, provide the framework within which railway companies (which includes network, train, and depot managers) must operate. It is through section 6 of the 1993 Act that the Office of Rail Regulation (ORR) - the independent UK rail regulator responsible for overseeing and implementing regulatory policy - gains its authority, with rail operators requiring a licence from the ORR.

The 1993 Act and the licence set out the specific conditions of operation for any particular operator, enforceable by the ORR. An exception to this approach is the HS1 line connecting St Pancras to the Channel Tunnel, which is exempted from the need for a licence to operate and instead is regulated by a contract with the Secretary of State for Transport.

Problem under consideration and rationale for intervention

Unless otherwise specified, any UK railway or delivery body of a railway is subject to the provisions in the 1993 Act (as amended by the 2005 Act). Whilst this framework may be suitable for regulating the existing rail network, it is not designed to foster the delivery of significant new railways such as HS2. Requiring the development of HS2 Phase 1 to comply with all of the elements of the existing regulatory framework would:

- Revisit or duplicate some of the consideration of the bill, its outcomes and impacts that will already have taken place in Parliament;

- Introduce significant risks of delay and additional costs incurred through compliance with the existing framework without providing any of the protections or benefits to users or rail operators that would normally be associated with compliance with the framework by existing operators.

For example, the role of the ORR as described under s.4 of the 1993 Act focuses on items that relate to the management of the existing network and interactions between existing rail industry bodies rather than the delivery body of a new railway. This could mean operation of the existing network is always prioritised ahead of the delivery of HS2, resulting in unfair delay and cost to the scheme.

The hybrid Bill will extend some existing provisions in the 1993 Act and will also disapply processes within legislation that are clearly designed and applicable only to the existing railway. For example, the procedure to close existing railway facilities as outlined by the 2005 Act requires proving of disuse or under-utilisation and a consultation process. However, the closures would already have been subject to debate as part of the parliamentary process, with those individuals affected able to petition the Bill. The closures would have been approved as necessary and appropriate through the Royal Assent to the Act. It would not be appropriate to then effectively reopen Parliament’s decision by having to follow the closure procedures as set out in the 2005 Act. This would also mean having to consider the same decision twice.

The normal process for closures is based on showing that the facilities should be closed based on a range of economic, financial, environmental and social criteria. It may well be the case that the closures required for HS2 Phase One would not meet these criteria and there would therefore be a conflict between the design of the railway as approved by Parliament and the inability to close a railway facility of some type e.g. a depot or a station. Therefore, such requirements need removing to ensure that the project approved by Parliament can be delivered.

As the rules that would apply are enshrined within primary legislation, amendment or disapplication of them require provisions within another piece of primary legislation or through alternative means where an Act allows. For the case of HS2, this will be achieved through the HS2 Phase One hybrid Bill.

Policy objective

The key aims of intervention are to ensure that:

- the railway can be delivered in a timely and cost-effective manner without jeopardising the operation and management of the existing UK railway;

- the delivery of the railway is lawful; and

- the regulatory burden (primarily on the Nominated Undertaker who will deliver HS2) is reduced where there is no negative impact.

Options considered

Do nothing - No powers in the hybrid Bill

This is the counter-factual in this impact assessment. Whilst it may technically still be possible to deliver HS2 Phase One under this option, it is very likely that there would be significant delay to the delivery of the scheme and therefore an increase in the cost of developing the scheme.

The delays, costs and regulatory burden could arise from:

- the ORR’s remit putting HS2 as a lower priority than the existing network and therefore HS2 would only be granted access to the existing railway network to undertake works (such as junctions) at times when compensation to train operators for disruption is most expensive;

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2 The Nominated Undertaker is the person or body appointed by the Secretary of State to use the powers in the Hybrid Bill to construct the HS2 scheme
- a licence being required for the testing of trains on the HS2 Phase 1 track, where there would be no safety or financial impact on the public or other operators of such testing, and where the testing of trains may be carried out by an organisation that does not ultimately intend to operate services on the track;

- the public being able to sue the train testing organisation for nuisance such as noise, without the protections granted to licensed train operators under the existing framework;

- having to attempt to make the case for closures that do not meet the normal criteria established for such decisions, and which would, in relation to construction work, already have been approved by Parliament;

- other operators holding the HS2 Phase One project “to ransom” by being obstructive when HS2’s developers need to discuss work on railway assets such as track or stations;

- inefficient delivery of work due to overlapping authorised works by statutory undertakers, where it would be more efficient to allow one party to do all the work, but where there is no power to transfer the authorisation to the most suitable party.

Costs could materialise as staffing costs to deal with these issues, payments to suppliers to maintain readiness despite delays, the costs of preparing and submitting a licence application, and rents extracted by other operators.

Estimating the amount of delay that this would cause to construction of HS2 is extremely difficult – it is not possible to identify what issues would cause delays, or the extent or nature of those delays, over a 13 year period. It is considered that the HS2 scheme would be burdened with greater administration and interface costs with no guarantee of timely resolution under this option.

Therefore this option does not meet the policy objectives and puts the successful delivery of HS2 Phase One at risk.

Option 1 (preferred option)

As mentioned above, due to the current rules being enshrined in law, intervention requires primary legislation. As such the hybrid Bill will include powers that:

- Make supporting the delivery of HS2 part of the ORR’s remit and place a duty on the railway industry to work cooperatively with the delivery of HS2 (with an arbitration process if necessary);

- Disapply the need to obtain a licence for the track testing period and extend the statutory defence against nuisance as provided by the 1993 Act to cover the period where the track and trains are being tested (which is normally only permitted for licensed operators);

- Disapply, for the period of constructing HS2 Phase One, the process that must be adhered to before a railway facility can be closed (as outlined in sections 29 to 31 of the Railways Act 2005); and

- Allow powers to do statutory works to be transferred between parties (HS2 and third party) where there is an overlap of HS2 and non HS2 works.

If the Bill achieves Royal Assent (target date of March 2015), these powers would be in force and must be adhered to by all relevant parties.

Costs and benefits of the preferred option

Benefits

The major benefit of the policy is that fewer and shorter delays would be incurred in the development and construction of HS2 due to equal treatment of HS2 and the other major bodies and businesses in
the rail industry. Should there be disputes, parties would go to arbitration. To understand the benefits it is necessary to compare to the counterfactual – the railway could still be delivered, but there would be no process for the nominated undertaker developing HS2 to engage with other industry bodies beyond commercial negotiation, meaning no time limit for concluding discussions and no process for resolving disputes. The costs of the arbitration process are unknown at this stage as they would vary depending on the complexity of the case in question. But the mere fact that the arbitration process exists would be expected to ensure that negotiations lead to reasonable solution. For example, the review of Crossrail legislation indicates that the arbitration powers have not yet been utilised. The net result would be a reduction in the length of time that disputes can drag on which should reduce the costs of developing the scheme.

To illustrate the scale of the potential costs, a one year delay in the opening date of the railway would reduce the estimated benefits by around £400m in the scheme appraisal due to the effects of discounting. This calculation therefore illustrates the impact on the economic case for the scheme if costs are incurred to the time profile as currently anticipated, but the scheme opening date is delayed.

Additional construction costs could also be incurred, such as the costs of labour, equipment and overheads that could not be stood down during delays. Extending the length of time that the project is in construction is also estimated to cost in the region of £7m-£10m per month in overhead and programme costs.

The disapplication of s.22-33 of the 2005 Act (relating to facility closures) would ensure that no irreconcilable conflicts of legislation would delay or prevent the scheme’s completion.

The policy will remove the regulatory burden of obtaining a network license for the HS2 operator for 2 years during track testing – a period when there would be no commercial train services on the high speed line. Costs are incurred both in applying for the licence and paying for the regulatory activities of ORR. The latter costs are calculated as a proportion of the ORR’s incurred costs allocated to regulated networks in proportion to revenue, and therefore cannot be calculated in advance. In particular, the costs of economic regulation are likely to be negligible during the period of track testing as there are no passengers. The ORR determines the cost of such licenses based on the actual staff resources that have been devoted to the activity. Past data from the costs of regulatory activities are not a suitable reference point to gauge the costs of economic regulation in any case given the significant differences between on the one hand the HS2 network and current regulated networks including Network Rail, HS1 and Eurotunnel. The HS2 network could have services competing directly with classic network offerings and therefore economic regulation would likely be of particular importance during operation.

The costs of applying for a license from the ORR would ultimately be required even without the disapplications in this legislation so the benefit is only that the cost is postponed by two years. Since this only refers to the administrative costs of setting up the license the estimated benefit is likely to be very small.

The nominated undertaker developing HS2 would be the key beneficiary due to the increased certainty over timely project delivery. Due to the scale of the project this could equate to several million pounds worth of savings for the developer as a result of less expenditure on resource costs. For example, if staff and equipment are available for work but not able to carry out construction the opportunity costs of delays caused by disputes could be significant. The actual cost will depend whether resources can be redeployed to areas not affected by disputes and the scale and complexity of the works in question.

Tax payers and fare payers would benefit from avoiding delays to the scheme opening. To illustrate the potential scale of this benefit, a delay to the opening of the line of one year would reduce the economic benefits of the scheme in the economic appraisal by around £400m due to the effects of discounting (assuming no change to the profile of costs).

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4 Based on the August 2012 Economic Case for the full Y Network, see http://www.hs2.org.uk/news-resources/publications/economic-documents
5 Based on the August 2012 Economic Case for the full Y Network, see http://www.hs2.org.uk/news-resources/publications/economic-documents
There would be a benefit to the nominated undertaker of not being responsible for statutory nuisance claims during the testing phase of the railway (which would be the case in the absence of this legislation).

There would also be benefits arising from the reduction in administrative costs associated with reducing the need to consider and provide evidence for closures that have already been debated by parliament. Preparing evidence to meet the criteria for a closure could be time-consuming in terms of collecting the relevant statistics and documenting this evidence; this nugatory effort will therefore be avoided through this policy.

Costs

The majority of the impact of including provisions in the Bill relate to how HS2 and the wider rail industry work together. Network Rail, Train Operating Companies affected by HS2 delivery and services, and the ORR will all have to work with HS2 to support the delivery of the scheme whilst protecting their respective interests. The level of engagement, work and involvement will depend on the area and type of works and it is therefore not possible to monetise the costs at this point in time. It is important to note that it is in the wider rail industry’s interests to engage with HS2 to ensure that impacts are minimised and opportunities are exploited, due to the overall benefits that it will bring to the rail network.

The arbitration process is expected to be used infrequently but to provide the incentives to ensure that any disputes are resolved in a timely fashion. The costs of an individual arbitration case are unknown at this stage and would vary depending on the complexity of the case in question. It seems reasonable to expect the costs to include a couple of weeks of evidence gathering and case preparation on behalf of both parties..

Direct costs and benefits to business (using One-In, Two-Out Methodology)

As this concerns the regulatory impacts associated with a significant spending decision which relies on regulatory mechanisms for delivery it is out of scope of One-In, Two-Out.

For the HS2 nominated undertaker and the eventual operator there are a number of ‘outs’ in terms of regulation, including:

- removing the need for a licence during track testing; and
- removing the need to comply with the railway facilities closure process as outlined in the 2005 Act.

Although there is no specific exemption for micro businesses, the make up of the rail industry is that of large scale companies and therefore micro businesses are very unlikely to be effected by any of the provisions in the railway matters part of the Bill.

Wider impact

The policy is not expected to have wider economic, equalities or financial implications. The organisations affected by this policy will be Network Rail, the ORR, the Nominated Undertaker for HS2 and Train Operating Companies, all of which are large organisations.

Summary and Implementation Plan

This impact assessment address powers being sought in the hybrid Bill to support the timely delivery of HS2 Phase 1. They derive from lessons learned on previous infrastructure projects such as Crossrail, in an attempt to protect the project from delays and costs that might otherwise arise. Experience shows that without the measures proposed, these delays and costs could be significant relevant to the overall value of the project, and that these powers can mitigate those risks without imposing excessive costs on competitors, the public or regulatory bodies. The necessity of these powers have been reflected in the post-legislative review of the Crossrail Act\(^6\) and it is likely that they would be of greater benefit to HS2 given larger number of interactions the Nominated Undertaker will have with existing operators and regulators given the magnitude of the scheme.

The review date of this impact assessment is set for March 2018 – three years after the target Royal Assent date of the Phase One hybrid Bill. This would mean that construction is underway and may mean that the efficacy of the provisions within the Bill can be assessed.