

Annex D – Assessment criteria

1. This annex focuses on the criteria we used to assess the main options we consider in this [consultation](#), and as reflected in the draft impact assessments for each of the main options.
2. This paper is structured as follows:
 - the purpose of the criteria;
 - the sources used and how these map onto an assessment framework; and
 - the detailed assessment criteria.

Purpose of the criteria

3. The purpose of developing assessment criteria is to support a consistent, objective approach for assessing the various future charging options. This approach has helped us to:
 - measure how successful each option is at meeting our objectives for the future structure of charges;
 - assess how well each option addresses any of the gaps we have identified (more information on the gap analysis can be found in [Annex B](#) of the consultation document); and
 - ensure we have not missed any impacts that we should have included in our analysis.
4. Any change to the existing structure of charges will have associated costs and benefits. The purpose of the impact assessment is to use these criteria to ensure we identify and understand relevant costs and benefits to ensure the adoption of proportionate changes to charges. In the absence of sound assessment criteria, it is easy to miss elements of costs and benefits that should have been included in the assessment. For example, when talking about costs it is easy to concentrate on direct costs of implementing a certain option (costs of collecting more granular data, for example) and not give enough consideration to the possible indirect costs (freight's reduced ability to compete with roads, for example).

Sources of the criteria

5. When developing our assessment criteria we considered a wide range of legal and policy aspects.

6. From a policy perspective, we considered:

- **Structure of charges objectives**¹ - these were developed using our statutory duties, our view of the problems that charges might help to solve, and the Rail Delivery Group's (RDG's) published 'vision' for the future charging structure. We consider that these objectives form the backbone of our future structure of charges, and therefore each option should be assessed based on how successful each option is at meeting our objectives.
- **Gap analysis** - comparing our existing charging structure to the objectives for charges, we identified certain gaps which we have grouped into four main themes: cost-reflectivity; capacity; complexity; and competition. More information on this analysis can be found in [Annex B](#) of the consultation document. To ensure that the future structure of charges is an improvement, we think it is important to assess to what extent (if any) each option addresses the identified gaps.
- **States of the world** – the future structure of charges must be appropriate for a range of different future scenarios or states of the world.² As there remains uncertainty around what scenario we are mostly likely to be in, our assessment must consider how the assessment carried out would vary under the different states of the world and how important this variation is likely to be.
- **ORR's six strategic objectives** – any future regulation and policy should reflect ORR's six strategic objectives.³
- **The governments' principles of regulation** - the principles around ensuring that any regulation is proportionate and should not impose unnecessary burdens are very important for our policy making.⁴
- **Specific impact tests from government guidance** - any full assessment would pick up all impacts but to ensure we have not missed anything important, we considered the specific impact assessment groups that have been identified by central government.

7. From a legal perspective, we operate within the framework set by UK and European legislation. In order to ensure compliance with legislation that applies to ORR, we have taken the following considerations into account in establishing our criteria :

¹ We published our proposed objectives for the structure of charges in a letter to RDG in December 2014 [here](#).

² States of the world were developed by RDG as part of its own review of charges and can be found on its [website](#).

³ These can be found on ORR [website](#) and reflect our statutory remit and objectives.

⁴ These principles are also incorporated into our 6th strategic objective – Be a high performing regulator.

- **Statutory duties** - our functions are defined by statute, and we must exercise those in accordance with our statutory duties in Section 4 of the Railways Act 1993. Our criteria for assessing our options must therefore use our statutory duties as a starting point.
- **Regulatory Enforcement and Sanctions Act 2008** - we are required to keep the carrying out of our functions under review to ensure that regulation does not involve: a) the imposition of burdens which are unnecessary; or b) the maintenance of burdens which have become unnecessary.
- **Equality Act 2010** - we have an equalities duty under Section 149 which requires us to have due regard, in the exercise of our functions, to the need to eliminate conduct that is prohibited by the Act. Such conduct includes discrimination, harassment and victimisation in relation to race, age, gender etc.
- **The Railways Infrastructure (Access and Management) Regulations 2005⁵** - we have a formal role in ensuring Network Rail's charges are compliant with these regulations (both as currently and prospectively apply), which provide various constraints on charges, including having regard to relevant case law on charging (both in Europe and in the UK).
- **Directive 2012/34/EU (recast)** – this legislation included provision for an implementing act setting out the modalities for the calculation of the cost that is directly incurred as a result of operating trains. This implementing act has been voted on by member states. It includes high level principles for charges but also more specifically, certain factors that cannot be recovered through variable charges.

Assessment criteria

8. The following assessment criteria map the detail within the above legal and policy sources to a manageable number of headings to provide a framework for our impact assessments. These headings are:
 - A. Impact on key charging objectives;
 - B. Wider policy impacts;
 - C. Potential for the option to address a gap;
 - D. Wider external impacts;
 - E. Legal impacts; and
 - F. Alternative states of the world.

⁵ These are currently are being amended to transpose the European Directive 2012/34 of 21 November 2012.

A. Impact on key charging objectives

9. This covers the charging objectives, the ORR strategic objectives⁶, and ORR's statutory duties. In assessing a potential option against this criterion, the following considerations might be relevant in respect of different types of industry stakeholders:
- **For each type of operator** – the cost-reflectivity of the new rate, the likely impact on the direction and magnitude of their charges if behaviour remains the same, the effect on efficiency for demand and use of the network, how well incentives are aligned between operators and Network Rail and if there is an effect on customers, rolling stock companies and the wider supply chain.
 - **For funders/taxpayers** – whether the new charge encourages more efficient decision making to support lower network costs and if this will result in improved value for money for funders and taxpayers.
 - **For Network Rail** – if the proposed charge will provide Network Rail with more cost-reflective rates for permitting a service, how its funding would change if it continued to supply the same capacity and how it will impact its efficiency in terms of short run provision and long run investment. Furthermore, the proportion of Network Rail's income from charges and how much of this income will be linked to outputs needs to be looked at; as well as if the option allows Network Rail to recover its full costs and the impact this will have on Network Rail's accountability.

B. Wider policy impacts

10. This criterion is based on our consideration of the gap analysis, in particular the 'complexity' and the 'competition' gaps. Other considerations included:
- the ORR statutory duties;
 - the objective to meet the charging principles;
 - the Regulatory Enforcement and Sanctions Act 2008 which requires us to ensure regulation does not involve the maintenance or imposition of burdens which are unnecessary; and
 - the ORR strategic objectives to support a better service for customers and to promote an increasingly dynamic, commercially sustainable sector and to be a high-performing regulator.

⁶ In particular, our objectives to support a better service for customers and to secure value for money from the railway, for users and funders and to promote an increasingly dynamic and commercially sustainable sector.

11. In assessing an option against this criterion the following considerations might be relevant :

- **Policy Impacts** - if there are any constraints that will prevent the intended incentive effects working as designed e.g. due to franchise protections or if the charge will add to complexity and therefore affect a stakeholder's ability to correctly respond; if small or micro businesses will be impacted; the impact on the transparency, predictability and stability of charges; if there is an impact on the future planning of those providing the railway; and if this option complements other options.
- **Transitional Impacts** - the costs to the industry of familiarising themselves with the changes, and how this could be mitigated to lessen any negative implementation impacts.
- **Practicality Issues** – if there are burdensome information requirements; if the calculations involved are very complex and theoretical; if stakeholders will understand any potential change; and the amount of work and resources that are required to develop the charge.
- **Effect on competition** - if the charge has an effect on the number or range of suppliers; if it limits the ability of suppliers to compete or compete vigorously; and if it affects freight's ability to compete with road.

C. Potential for the option to address a gap

12. We have identified this criterion based on the results of our gap analysis. It is intended to enable us to consider how well an option addresses any of the four key themes: cost-reflectivity; capacity; complexity; and competition.

D. Wider external impacts

13. This criterion is based on the equalities duty, consideration of specific impacts on the environment, rural proofing⁷ and sustainable development as well as the ORR statutory duties. When assessing an option against this criterion, the following considerations might be relevant:

- the option has an impact on the funds available to the Secretary of State for the purposes of his functions in relation to rail, if there are impacts on users or potential users of services;

⁷ Rural proofing assessments are used to ensure we identify the needs and interests of rural communities and businesses. Full guidance is provided by Department for Environment, Food and Rural Affairs and can be found [here](#).

- the Secretary of State or Scottish Ministers have provided any advice that may have an impact;
- there would be any safety concerns arising from the particular option;
- there are positive or negative impact on the environment, rural proofing or sustainable development; and
- there are any impacts on the equalities groups as described in the Equality Act 2010.

E. Legal impacts

14. This criterion reflects the fact that access charges must be lawful. In assessing the option against this criterion the following points might be relevant:

- if the charging option creates any other impacts that arise from our Section 4 duties not already covered elsewhere in the criteria;
- if the charge complies with the latest version of the Access and Management Regulations 2005 including the amendments that will be made to these to reflect Directive 2012/34 and the Commission's Implementing Regulation on the modalities for the cost that is directly incurred; and
- if the charge complies with any relevant case law.

F. Alternative states of the world

15. This criterion reflects RDG's alternative states of the world (more information on this can be found in [Annex C](#) of the consultation document) and is designed to assess if the impact of the particular charging option changes under different states of the world that we will might find ourselves in.