



Open access infrastructure cost charge implementation

3 December 2018

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Summary

Access charges are important as they affect the decisions that infrastructure managers, operators and funders make about use of the rail network. They play an important role in improving outcomes for passengers, freight customers and taxpayers.

In the PR18¹ final determination, we confirmed that we would levy charges in control period 6² (CP6) to recover some of Network Rail's fixed network costs from all types of operators, including open access operators (OAOs) that are currently excluded from paying these charges. These charges represent mark-ups over directly incurred costs, and we refer to them as infrastructure cost charges (ICCs).

Levying ICCs on open access services potentially makes open access entry less attractive as it increases the cost that operators must bear when operating a service. However, this additional income would be taken into account when assessing access applications, which would increase the likelihood that an open access proposal is granted access rights. The availability of access rights is a major obstacle to greater on-track competition in the passenger rail market.

This consultation seeks to find a balance between the greater cost that some open access services will bear and the greater likelihood of open access operators being granted access rights. In this document, we are finalising three remaining implementation issues regarding levying ICCs on open access services:

- the introduction of related changes to our access policy, specifically the 'not primarily abstractive' (NPA) test;
- the definition of a substantial modification to an existing service; and
- the definition of interurban open access services.

Our decision on the first issue will influence the likelihood that a future open access service to be charged an ICC will be granted access rights. Our decision on the other two issues will help to determine which open access services will be charged the ICC in CP6.

We will conclude on these policy areas before the beginning of CP6.

Please submit your responses to this consultation by 14 January 2019.

¹ 2018 periodic review.

² CP6 will run from 1 April 2019 to 31 March 2024.

Introduction

1. During the PR18 charges review, we confirmed that we would continue to work towards levying charges in CP6 to recover some of Network Rail's fixed network costs from all operators, including open access operators (OAOs) that were previously excluded from paying these charges. These charges are mark-ups over directly incurred costs, which we now refer to as infrastructure cost charges (ICCs).
2. We have already concluded on most issues regarding ICCs. These are set out in our October 2018 conclusions document³ and the decisions document released alongside the final determination⁴.
3. However, there are several implementation issues still outstanding regarding levying ICCs on open access services. These include:
 - changes to the access policy related to the 'not primarily abstractive' (NPA) test;
 - the definition of what characterises a substantial modification for an existing operator; and
 - the definition of the interurban market segment.
4. This consultation sets out our proposed implementation policy on each of these areas and invites discussion from industry and other interested parties. We are concluding on these policy areas in March 2019.

Overview and linkages: related consultations

5. Alongside this consultation on the implementation of ICCs for open access services, we have published two other related documents relevant to OAOs.
6. These documents relate to:
 - the Economic Equilibrium Test (EE Test); and
 - our monitoring framework for OAOs.

Economic Equilibrium Test

7. The EE Test is the subject of an EU Implementing Regulation which comes into force on 1 January 2019. We have concurrently published draft guidance on the EE Test

³ 2018 periodic review final determination: Supplementary document – Charges and incentives: Infrastructure cost charges conclusions, Office of Rail and Road, October 2018. This may be accessed [here](#).

⁴ 2018 periodic review final determination: Supplementary document – Overview of charges and incentives decisions, Office of Rail and Road, October 2018. This may be accessed [here](#).

for consultation⁵ alongside this document. The Implementing Regulation provides that, at the request of a relevant party, the regulatory body (ORR for the UK) is responsible for assessing whether a new rail passenger service would compromise the economic equilibrium of a public service contract (PSC), taking into account net customer benefits and other factors associated with the proposed new service. The guidance sets out the circumstances under which the EE Test can be requested, the criteria for assessing the impact on the economic equilibrium, and how we plan to carry out the test in practice.

8. We have tried to keep our policy and procedure for the EE Test as close as possible to the NPA Test, recognising that there is a significant degree of overlap between the two tests, particularly in respect of consideration of customer and wider benefits. More detail about how we intend to apply the EE Test is in the draft guidance.

Monitoring framework for open access

9. Recognising the potential benefits that greater open access can deliver through generating competition in the market, we committed in our 2018/19 business plan to 'develop a framework to monitor the impact of, and response to, open access competition'. We have now launched this work and published a paper⁶ setting out the scope, objectives and the key deliverables.
10. Developing a framework that enables regular monitoring of responses to open access activity should help evidence and address potentially anti-competitive behaviour more quickly than at present.
11. We will also publish information for the industry on what ORR considers, in principle, to constitute a competitive response — which ORR would welcome — and what constitutes anti-competitive behaviour. This should ensure the fair treatment of open access operators by making clear what we expect of market participants.
12. Where possible, we will use the findings of this work to inform the UK Government's rail review and ensure that open access is given due consideration as part of that work.

Structure of this consultation

13. This consultation document is structured as follows:
 - chapter 1 provides background to our ICC policy for OAOs and the decisions that have been taken to date;

⁵ *Draft guidance on the Economic Equilibrium Test*, Office of Rail and Road, December 2018. This may be accessed [here](#).

⁶ *Monitoring framework for open access operators*, Office of Rail and Road, December 2018. This may be accessed [here](#).

- chapter 2 outlines our proposed changes to the NPA test in light of the introduction of the ICC on new interurban open access services;
 - chapter 3 sets out our proposed definition of a substantial modification to an existing service which would potentially bring a service in scope for an ICC; and
 - chapter 4 sets out our proposed definition of the interurban market segment.
14. We are also publishing two supporting draft impact assessments alongside this consultation on:
- defining the interurban market segment⁷; and
 - changes to the NPA test⁸.

Responding to this consultation

15. This consultation closes on 14 January 2019. Please submit your responses, in electronic form, to natasha.frawley@orr.gsi.gov.uk. You may find it useful to use this [pro forma](#) to structure your response to this consultation.
16. We plan to publish all responses to this consultation on our website. Accordingly, when sending documents to us, we would prefer that you send your correspondence to us in Microsoft Word format or Open Document Format. This allows us to apply web standards to content on our website. If you do email us a PDF document, where possible please:
- create it from an electronic word processed file rather than sending us a scanned copy of your response; and
 - ensure that the PDF's security method is set to "no security" in the document properties.
17. Should you wish any information that you provide, including personal data, to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

⁷ *Draft impact assessment on defining the interurban market segment for open access services*, Office of Rail and Road, December 2018. This may be accessed [here](#).

⁸ *Draft impact assessment on changes to the NPA test*, Office of Rail and Road, December 2018. This may be accessed [here](#).

18. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.
19. If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

1. Background

- 1.1 We previously set out our intention to work towards levying charges to recover fixed network costs from all operators, including open access operators (OAOs), in CP6.
- 1.2 As part of our charging review, one of the reforms we have chosen to prioritise is the charges that recover some of the fixed costs of running the rail network, i.e. those costs that do not vary with use in the short term. We have called these infrastructure cost charges (ICCs). The aims of this reform are to:
 - improve transparency around the fixed costs of the network, and their drivers;
 - ensure that all operators make a contribution towards fixed network costs, to the extent that they are able to; and
 - promote further competition in the provision of passenger services.
- 1.3 Levying ICCs on open access services potentially makes open access entry less attractive as it increases the cost that operators must bear when operating a service. However, it can increase the likelihood that an open access proposal is granted access rights, something that is a major obstacle to greater on-track competition in the passenger rail market. This is because the ICC income to Network Rail would be taken into account in the 'not primarily abstractive' (NPA) test, thus making the test easier to pass. This consultation seeks to find a balance between the greater cost that some open access services would bear and the greater likelihood of open access operators being granted access rights⁹.

Our determination on open access operator infrastructure cost charges in CP6

- 1.4 The relevant issues we have already concluded on are set out below.
- 1.5 **We determined there are two market segments for open access services in CP6: interurban and other. ICCs will be levied on interurban services.** We consult on the definition of the characteristics of services that fall into each market segment in this document.
- 1.6 **We concluded that existing OAOs that are operating in the interurban market segment will have relief from increases in charges prompted by the introduction of the ICCs for the whole of CP6.** This relief would not be granted if an existing OAO were to substantially modify its service. How substantial modification is defined is consulted on in this document.

⁹ While taking into account the potential effects on railway funders.

- 1.7 **We concluded that ICCs will be levied on OAOs as a rate per train mile.**
- 1.8 **We clarified that an open access service can partly fall within the interurban market segment. The service would only be charged for the train miles within the interurban market segment.** See Annex C from our October 2018 ICC conclusions document¹⁰ for examples of how different services would be potentially charged.
- 1.9 **We set the ICC for open access services (or parts of services) that are categorised as part of the interurban market segment in CP6 at £4 per train mile (2017-18 prices).**
- 1.10 **We determined that ICCs for interurban new entrant OAO services will be phased in per Table 1.1.** See Annex B from the October 2018 ICC conclusions document for the definition for a new entrant OAO.

Table 1.1: Transitional arrangements for new entrants operating in an interurban market segment

Year of operation of new entrant	Year 1	Year 2	Year 3	Year 4	Year 5
% of ICC levied	0%	0%	25%	50%	100%

Note: The total ICC (before phasing) will depend on the proportion of the service that operates in the interurban market segment as outlined in the October 2018 ICC conclusions document. Year 1 of the phasing-in period refers to the year a new entrant starts operating services. It does not refer to the specific year of the control period.

Outstanding issues

- 1.11 In our October 2018 conclusions document, we set out that several implementation issues still needed to be resolved before the beginning of CP6. These are:
- changes to the NPA test;
 - what constitutes a substantial modification of access rights for an existing operator; and
 - the definition of the interurban market segment.
- 1.12 We consult on these issues in the remainder of this document.

¹⁰ 2018 periodic review final determination: Supplementary document – Charges and incentives: Infrastructure cost charges conclusions, Office of Rail and Road, October 2018. This may be accessed [here](#).

2. Revised ‘not primarily abstractive’ test

- 2.1 The ‘not primarily abstractive’ (NPA) test informs our assessment of the balance between the benefits of greater open access competition against the potential costs to the Secretary of State through lower franchise values, when making track access decisions.
- 2.2 As discussed in our October 2018 conclusions document¹¹, we are revisiting our access policy, including the NPA test, to determine the changes that might be needed. This is also timely given the Economic Equilibrium Test (EE Test) is coming into force. Changes to the access policy alongside the potential application of infrastructure cost charges (ICCs) on new interurban services are important to facilitate on-rail competition.

June 2018 ICC consultation

- 2.3 In our June 2018 ICC consultation¹², we said that if we decided to levy an ICC on open access operators (OAOs) in CP6, we would consider making limited changes to our access policy, including the NPA test. This was in line with our view that OAOs should get improved market access in return for making a greater contribution to the network costs through payment of the ICC.
- 2.4 We set out our current view that the forecast income from ICCs should be included in the calculation of the revenue generated by proposed services. This would tend to increase the NPA ratio. We also confirmed that for consistency we would retain the existing threshold value of 0.3, as it currently features in our overall analysis of access applications.
- 2.5 Network Rail, Rail Delivery Group (RDG) and several operators responded to our proposed change to the NPA test. Several respondents, including RDG and Open Access Rail asked for more information on our proposed changes to the access policy.
- 2.6 Network Rail was supportive of including the new revenue in the NPA test. However, it did not explicitly state whether it supported our proposal that the forecast ICC revenue be included as revenue generated in the NPA calculation.

¹¹ 2018 periodic review final determination: Supplementary document – Charges and incentives: Infrastructure cost charges conclusions, Office of Rail and Road, October 2018. This may be accessed [here](#).

¹² 2018 periodic review final determination: Supplementary document – Charges and incentives: Consultation on infrastructure cost charges, Office of Rail and Road, June 2018. This may be accessed [here](#).

- 2.7 First Rail were supportive of changes to the access policy, but did not think changes to the NPA test were appropriate. It stated that it was unclear why the ICC would mean a new operator could abstract additional revenue from a franchised business.
- 2.8 Arriva Rail North suggested that the NPA threshold value be recalibrated. It stated that a revised access rights policy should be developed to reflect the characteristics of new and existing open access services operating in all market segments, as well as operators with franchise or concession agreements with transport authorities.
- 2.9 Virgin & Stagecoach were concerned that our proposed method of adding the ICC revenue to revenue generated was illogical. It stated that the cash raised through an ICC was not additional revenue to the industry over and above the revenue generated by the OA operator. It suggested that doing so may result in double-counting. It suggested that the ICC payment be treated as a recompensing payment for the revenue abstracted from the existing railway.

Our response

- 2.10 We welcome the responses from stakeholders. We are particularly grateful for the detail from several respondents outlining their suggestions of how the NPA test should be adjusted to take into account the income from an ICC.
- 2.11 We have decided not to adjust the NPA test threshold value at this time. This is in line with our decision to make only minor adjustments to our access policy to account for the ICC. In addition, because the original ratio would still apply when considering open access services that would not be subject to ICCs, we consider we should maintain a consistent ratio for all open access applications in order to ensure a degree of certainty and stability in this market.
- 2.12 In light of our decision to make an adjustment to the NPA test and the responses outlined above, we propose to make an adjustment to the calculation of the NPA test to take into account the additional revenue from potential ICC payments. We have considered the following options for adjustments to the NPA test:

- **Option 0:** Status quo – no change to the NPA test;

$$\frac{\text{revenue generated}}{\text{revenue abstracted}} > 0.3$$

- **Option 1:** Add the ICC payment to revenue generated in the NPA test;

$$\frac{\text{revenue generated} + \text{ICC}}{\text{revenue abstracted}} > 0.3$$

- **Option 2:** Subtract the ICC payment from revenue abstracted in the NPA test;

$$\frac{\text{revenue generated}}{\text{revenue abstracted} - \text{ICC}} > 0.3$$

- 2.13 We rejected the status quo as changing how the NPA ratio is calculated is our preferred way of increasing access rights for OAOs who pay an ICC.
- 2.14 We proposed option 1 as our preferred method in our June 2018 consultation. We recognise that option 2 arguably has a clearer rationale than option 1. ICCs represent payments to government, funded by the farebox revenue generated by the new service. Therefore, it is logical to subtract the ICC from revenue abstracted as it represents a long-term loss to taxpayers.
- 2.15 Our high level analysis of option 1 suggests that it is more likely to result in an application passing the test than option 2 (albeit only for marginal cases). Therefore, in line with our stated policy of promoting greater open access competition while recognising that the NPA test remains only one part of ORR's criteria when deciding on open access applications, it remains our preferred option. We recognise that this option would likely have a greater negative effect on railway funders than option 2.
- 2.16 We note that the EE Test is coming into force in early 2019 and we are currently consulting on our guidance on how we will apply the test. Our conclusions on this may affect the changes we can make to the NPA test.

Consultation questions

Question 2.1: Do you have views on our proposal to add ICC income to revenue generated in the NPA test when assessing new (or substantially modified) interurban open access services?

3. Definition of a ‘substantial modification’ of access rights for existing open access operators

- 3.1 In the October 2018 conclusions document on infrastructure cost charges (ICCs), we determined that we would provide relief to existing open access operators (OAOs) from increases in charges prompted by the introduction of the charge for the whole of CP6. We acknowledge that OAOs currently operating services were granted access based on our previous access policy, which restricted OAOs’ use of the network. Providing relief over CP6 is designed to protect the existing level of competition created by these services.
- 3.2 We defined existing OAOs as operators of services that had access agreements approved before we set out our intention to review the charges levied on OAOs as part of PR18. We formally set out this intention in our letter responding to the Competition and Market Authority Report on on-rail competition published on 26 November 2015¹³. We published a consultation on network charges on 10 December 2015¹⁴.
- 3.3 If an existing OAO proposes a substantial modification¹⁵ to its services and that service falls within the interurban market segment, it will be subject to an ICC.

‘Substantial modification’

- 3.4 The proposed Economic Equilibrium Test (EE Test) guidance¹⁶ provides a definition for a substantial modification of an existing service. The guidance sets out that the following amendments to an existing open access service should be considered a substantial modification:
- increase in service frequency;
 - change in the number of stops¹⁷; or

¹³ *Letter to CMA: Competition in Passenger Rail Services in Great Britain*, Office of Rail and Road, November 2015. This may be accessed [here](#).

¹⁴ *Network Charges: A consultation on how charges can improve efficiency*, Office of Rail and Road, December 2015. This may be accessed [here](#).

¹⁵ Previously referred to as a ‘significant variation’ in the June 2018 consultation and October 2018 conclusions document. Phrasing was changed in order to align definitions within open access policy (the ICC policy with the EE Test policy).

¹⁶ Discussed in the introduction of this consultation. *Draft guidance on the Economic Equilibrium Test*, Office of Rail and Road, December 2018. This may be accessed [here](#).

¹⁷ The right for a service to stop at a station where the operator already has the right to stop for another service. See Annex A for an example.

- additional station stops¹⁸.

- 3.5 For consistency when assessing access applications from existing OAOs, we propose to use the same definition to determine if a modification to an existing OAO's service means the service is now in scope to pay an ICC. See Annex A for worked examples of how all three of the modifications outlined above would be assessed.
- 3.6 If a service is deemed to have been substantially modified, then the interurban definition (outlined in Chapter 4) will be applied to the service to determine if it will pay the ICC.
- 3.7 Considering our determination to support the existing level of service, the ICC would only be applied to those services that were substantially modified and not all of an existing OAO's service.

Consultation questions

Question 3.1: Do you agree that the substantial modification definition is appropriate for determining if a modified service proposed by an existing operator is in scope to pay an ICC?

¹⁸ The right to call at a new station.

4. Proposed definition of the interurban open access market segment

4.1 In this chapter, we set out our proposed definition for the interurban market segment, for the purpose of levying infrastructure cost charges (ICCs) on new open access services.

Background

- 4.2 In determining market segments, we took into account the legislative framework¹⁹, which allows infrastructure managers to levy mark-ups above directly incurred costs on specific market segments so long as those market segments can bear such charges.
- 4.3 In our September 2017 consultation on charges recovering fixed network costs²⁰, we set out initial proposals around a potential approach to defining passenger market segments, for the purpose of levying ICCs on open access services. This was supported by analysis undertaken by consultants CEPA and Systra²¹ to identify market segments that are expected to be able to bear charges above directly incurred costs, and to quantify the ability to bear charges in such market segments.
- 4.4 In their analysis, CEPA and Systra looked at the characteristics of passenger services that affect demand, costs and revenues, in order to establish those characteristics that can be used to define market segments that are able to bear charges.
- 4.5 The consultants considered a range of passenger service characteristics and concluded that market geography²², time of day and journey purpose are likely to be key determinants of demand for passenger services. However, existing industry data sources do not break down information relating to services based on the time of day.
- 4.6 The key conclusion based on this high level analysis was that services running between major UK urban areas (defined as ‘major intercity’ in the report) or between London and more developed urban centres around London (defined as ‘long-distance commuter’) were likely to be able to bear a considerable mark-up

¹⁹ Paragraph 2 of Schedule 3 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 to implement EU Directive 2012/34/EU.

²⁰ *PR18 consultation on charges recovering fixed network costs*, Office of Rail and Road, September 2017. This may be accessed [here](#).

²¹ *PR18 Structure of charges review – Market can bear analysis: Passenger services*, Cambridge Economic Policy Associates & Systra, September 2017. This may be accessed [here](#).

²² Understood by us to mean the origin and destination of passengers.

charge. Other services, such as those defined as ‘rural’ or ‘suburban’ services, were deemed to be less able to bear a mark-up charge.

4.7 CEPA and Systra’s analysis suggested that the services they defined as ‘intercity’ and ‘long-distance commuter’ are likely to be able to bear a charge. However, the consultants were not able to find a clear way of distinguishing between these two types of service. In addition, the analysis did not find clear differences in their ability to bear mark-up charges. Therefore, we saw no benefit in distinguishing between them and determined they would be grouped together in a single ‘interurban’ market segment²³.

Defining the interurban market segment

4.8 Based on the relevant legislative requirements and supported by CEPA and Systra’s analysis, we concluded in our October 2018 document²⁴ that we would define two market segments: ‘interurban’ and ‘other’. ICCs will apply to new open access services that fall within or partly within the interurban market segment in CP6. As discussed in the previous chapter, where there is a substantial modification to an existing OAO’s services within the interurban market segment, these will also be charged an ICC.

4.9 We propose to define the interurban market segment based on the scale of the underlying market demand and the geography of the passenger movements served. Specifically, we propose using:

- station demand (based on the sum of annual station entries and exits, as published by ORR). This serves as a proxy for origins or destinations with a sizeable travel market; and
- straight-line distance between stations (calculated based on the station coordinates published by ORR). This is a proxy for journey purpose and also for distinguishing between different travel markets.

4.10 In defining the interurban market segment, we initially considered using geographical or administrative boundaries to determine which stations were in urban areas and then allocate stations to specific urban areas. We looked specifically at the UK Government urban-rural area classification²⁵ and functional urban areas

²³ This is consistent with one of the pairs set out in paragraph 2(10) of Schedule 3 of the 2016 Regulations, namely ‘urban or regional versus interurban passenger services’.

²⁴ *2018 periodic review final determination: Supplementary document – Charges and incentives: Infrastructure cost charges conclusions*, Office of Rail and Road, October 2018. This may be accessed [here](#).

²⁵ Published by the Department for Environment, Food and Rural Affairs (Defra). *Rural urban classification*, Government Statistical Service, November 2017 (last updated). This may be accessed [here](#).

classification published by the Office for National Statistics (ONS)²⁶. Both urban classifications include settlements with very low populations²⁷. As a result, most rail stations in Great Britain are within urban areas by these definitions.

4.11 We also considered including operating speed as a criteria for our interurban definition. Generally, speeds are higher for longer distance services²⁸, which are more likely to fall within the interurban market segment. However, having specific cut-off speeds could create a perverse incentive for new service proposals to run at lower speeds (possibly by stopping at additional unnecessary stations). This is unlikely to be an efficient use of capacity or to serve the interests of passengers. We are therefore not proposing to set speed thresholds in defining the interurban market segment. However, we have not ruled out including this factor in the context of a more discretionary approach to market definition (see ‘ORR discretion’ below).

Thresholds

4.12 We propose that interurban services are those that meet the following criteria:

- at least one station served has annual entries/exits above a specified threshold S1; and
- at least one other station has annual entries/exits above a specified threshold S2 (where S2 is less than or equal to S1); and
- two of the stations meeting the S1 and S2 demand thresholds (above) are at least D²⁹ miles apart.

4.13 The use of two separate station passenger thresholds allows the ICC to be more carefully targeted³⁰. We have proposed four options for possible values of S1 and S2 outlined in table 4.1.

Table 4.1: Proposed options for passenger number thresholds

	S1	S2
Option 1	≥15m passengers per year	≥15m passengers per year
Option 2	≥15m passengers per year	≥10m passengers per year

²⁶ *Local Authority District to Urban Audit Core Cities, Greater Cities and Functional Urban Areas*, Office for National Statistics, December 2016. This may be accessed [here](#).

²⁷ The Rural-Urban classification considers a settlement urban if it has a population greater than 10,000. The smallest functional urban area has a population of 50,000.

²⁸ Speed is also affected by stopping patterns, rolling stock and infrastructure characteristics. In practice, these factors tend to lead to higher speeds for longer distance services.

²⁹ Straight-line distance between two stations.

³⁰ Note that S1 may equal S2.

	S1	S2
Option 3	≥10m passengers per year	≥10m passengers per year
Option 4	≥10m passengers per year	≥5m passengers per year

- 4.14 There are 27 stations in Great Britain that have passenger traffic above an average of 15 million passenger entries/exits per year³¹. Of these, 18 are in London and include all London termini serving long-distance passengers outside the southeast.
- 4.15 At a threshold of ten million passengers, an additional nine stations are added including five in London. This threshold includes three additional major hubs outside the southeast plus Cambridge³².
- 4.16 At the five million passenger threshold, an additional 53 stations are added to the list, 30 of which are in London. The total number of stations included at this threshold is 89. This threshold includes the majority of remaining stations serving long-distance passengers alongside a number of other major long-distance London commuter stations³³. The detailed list of the specific stations that fall into each of the thresholds is included in Annex B.
- 4.17 We propose that the specified distance (D) could be 40 miles, 50 miles or 60 miles. These distances have been chosen for simplicity. Forty miles was chosen as the minimum distance in order to exclude shorter distance passenger flows between major cities, and commuter flows where ticket prices are regulated and often subsidised. Forty miles is also likely to be greater than the distance between the two furthest stations within a given large urban area. However, we note that there is no clear definition of the minimum distance for a long-distance rail journey. We are open to stakeholder comments on our proposed options and encourage responses that outline reasoning for a different threshold.
- 4.18 However, we note that even the 40 mile distance would result in travel between, for example, Manchester and either Leeds or Liverpool not falling inside the interurban market segment despite both Leeds and Liverpool being distinct urban areas separate from Manchester. See Annex C for a map illustrating how the 40 mile distance would apply for stations with passenger traffic above an average of 15 million per year.

³¹ Passengers per year based on average station entries/exits for the five years to 2016-17. Note that this data is due to be updated for 2017-18 on 11 December 2018. *Estimate of station usage*, Steer Group, December 2017. This may be accessed [here](#).

³² Cambridge station provides services to the London long distance commuter market.

³³ This threshold also includes some secondary stations in major urban centres which nonetheless have the potential to serve a larger proportion of long distance passengers in future, for example Manchester Victoria.

- 4.19 We propose to use straight-line distance rather than, for example, distance measured on the rail network, as it is clearly defined and more straightforward to calculate. ORR publishes coordinates of each station, so the straight-line distance can be easily calculated. Straight-line distance is also highly correlated with other measures of distance. However, there are notable exceptions such as the significant difference between straight-line distance and rail/travel miles between Bristol and Cardiff.
- 4.20 See Annex D for some worked examples of how these three criteria work together to define interurban services.
- 4.21 By distinguishing stations as being inside or outside the interurban definition by reference to passenger numbers, there is a potential opportunity to incentivise new open access operators to run their services out of less busy stations close to hubs with higher passenger traffic.
- 4.22 Therefore, we propose to apply an additional criterion to include all stations³⁴ within a certain radius (i.e. walking distance) of the stations chosen. We initially propose a radius of two miles. This addition to our criteria would mean the interurban market segment definition includes stations such as Waterloo East in the London Waterloo catchment area, and Manchester Oxford Road and Manchester Victoria within the Manchester Piccadilly catchment. See Annex E for the proposed additional stations that would fall into the interurban market definition should this additional criteria be applied.

ORR discretion

- 4.23 We have proposed the approach outlined in the previous section so that a potential applicant would relatively easily be able to determine whether its proposed service would fall into (or partly into) the interurban market segment. We consider that a specific definition is better than one with a discretionary aspect because of the certainty it gives potential applicants.
- 4.24 However, there may be a benefit to occasionally applying judgement to services at the margin of the interurban market segment definition.
- 4.25 In light of this consideration, in rare cases when an open access proposal is close to the margins of the market definition threshold and at our discretion, we could undertake bespoke analysis to determine whether a service should be included in the interurban market segment.
- 4.26 We propose this analysis would take account of the results from the factors proposed above, alongside other considerations, potentially including:

³⁴ Including those that would have otherwise been excluded because average station exits/entries is less than 5 million passengers per year.

- stopping pattern;
- market geography;
- journey purpose;
- availability and quality of non-rail alternatives³⁵; and
- speed of service.

4.27 We note that discretion introduces a greater degree of uncertainty and may also potentially delay the, already lengthy, application process.

4.28 We also note that if we were to decide to allow a discretionary element in our decision-making process, we would need to undertake further work to determine clearer guidelines for how we would exercise that discretion.

Consultation questions

Question 4.1: Do you have views about our intention to define the interurban market segment in terms of station demand and minimum distance? Do you have views on the proposed passenger and distance thresholds?

Question 4.2: Do you have suggestions for other characteristics that could be used as potential parameters for the interurban market segment?

Question 4.3: Do you have views about the proposal to include all stations within a certain radius of busy stations within the interurban market definition? Do you agree with the proposed two mile radius?

Question 4.4: Do you have views on whether ORR's discretion should sometimes be used when determining whether a new open access service is part of the interurban market segment? How could we exercise that discretion? Do you have views on what may be relevant guidelines for the discretion?

³⁵ To explicitly measure the competitive position of rail, and an operator's ability to charge higher prices.

Annex A: ‘Substantial modification’ examples

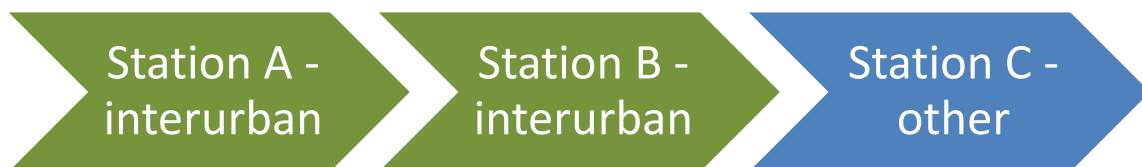
Example A1: increased frequency of services

1. An existing OAO operates three services a day with the following stopping pattern:



2. The operator applies to increase the frequency to six services a day. The stopping pattern remains unchanged.
3. An increase in frequency is a ‘substantial modification’. The three additional services are in scope to pay ICCs.
4. The stations must be tested against the interurban market definition (described in Chapter 4).

For example, if the service is as follows (assuming the straight-line distance between stations A and B is greater than the proposed distance thresholds and C does not meet the station demand criteria):



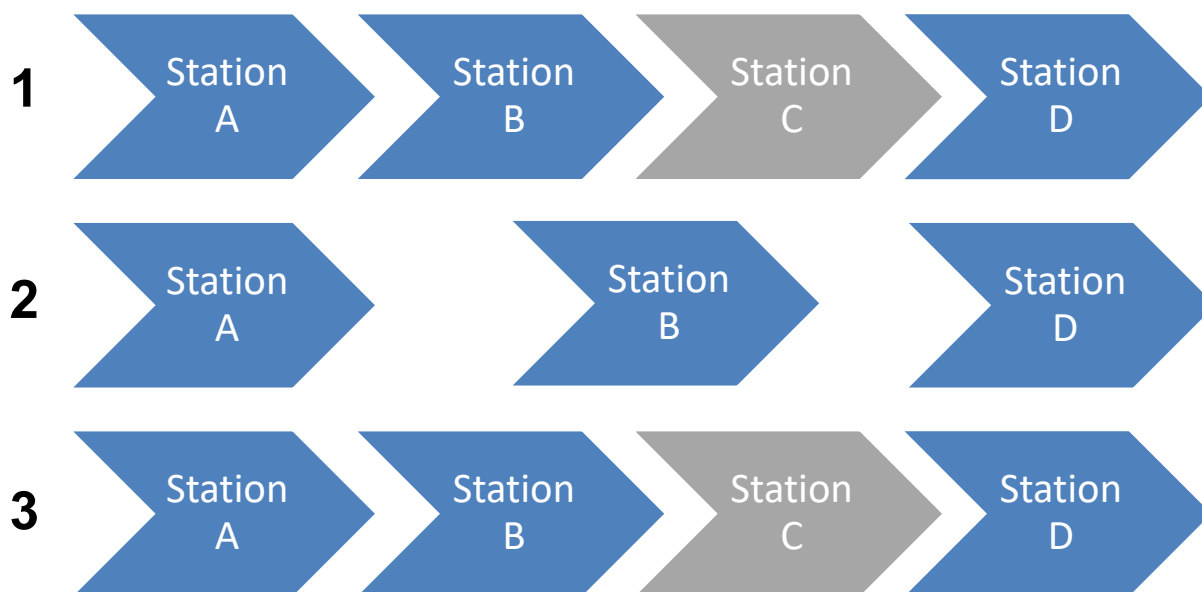
5. Then an ICC would be charged on the three new services. The charge would only be levied on the part of the service within the ‘interurban’ market segment, i.e. between station A and station B. The charge would not be levied on the existing three services.
6. However, if the service does not fall within the interurban market definition, none of the new services will be charged an ICC³⁶. For example, the following service would not be charged the ICC:



³⁶ This implies that only one or none of the stations meet the station demand thresholds classed as interurban stations, or the distance between the interurban stations is below D (see chapter 4).

Example A2: Increased number of stops

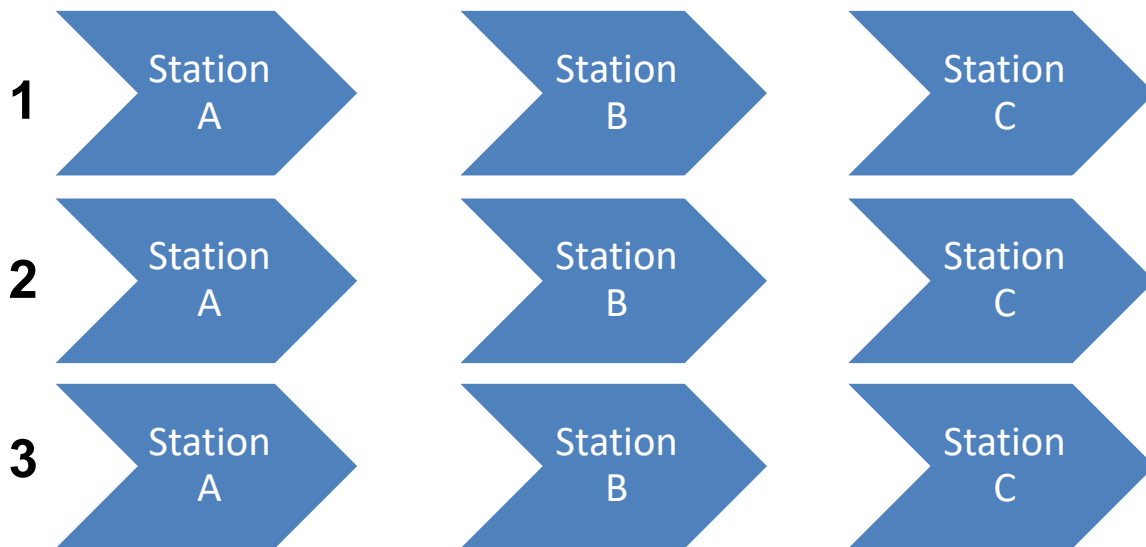
7. An existing OAO operates the following three services:



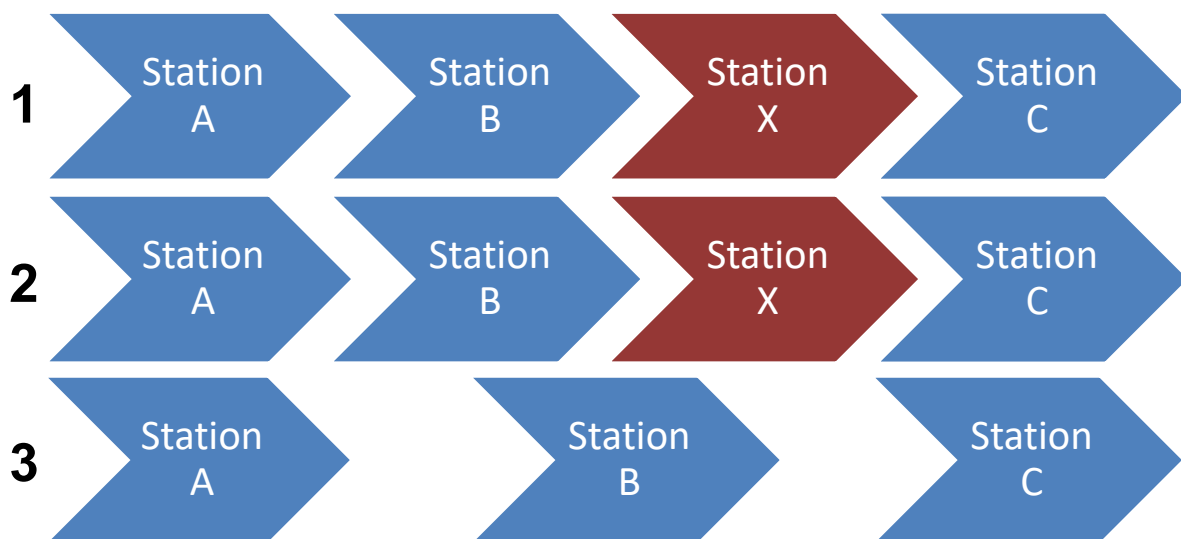
8. Two of the services (labelled as 1 and 3) currently stop at station C, but service 2 does not.
9. If the OAO applied for rights for service 2 to stop at station C, this would be an increased number of station stops. The operator has the right to stop at that station on some services, but does not currently have the rights for service 2.
10. A change in the number of stops is a 'substantial modification'. Therefore, the change proposed to service 2 is a 'substantial modification' and that service would be in scope for an ICC. As there was no change to services 1 and 3, they remain out of scope for an ICC.
11. If the modified service is within the interurban market segment, then it will pay an ICC for the part of the service within that segment. See paragraphs 4 to 7 in Example A1.

Example A3: Additional station stops

12. An existing OAO operates the following services:



13. The OAO proposes to add an additional station to two of the services. It proposes that two of the three services will now stop at station X³⁷. The third service will remain unchanged:



14. An additional station stop is a 'substantial modification'. Therefore, the changes proposed to two of the services are 'substantial modifications' and the two services are now in scope for the ICC. As there was no change to the third service, that will remain out of scope.

15. If the two modified services are within the interurban market segment, then they will pay an ICC for the part of the service within that segment. See paragraphs 4 to 7 in Example A1.

³⁷ None of the existing operator's services stop at station X.

Annex B: Stations by passenger traffic Great Britain

1. This annex lists the stations (S1 and S2) considered in Chapter 4 for the interurban definition by average annual station entries/exits. See Annex E for the additional stations proposed in paragraph 4.22.

Table B1: Stations with an average of more than 15m station entries/exits per year

Station name	Passenger numbers
Waterloo	98,426,474
Victoria	80,216,363
Liverpool Street	63,795,994
London Bridge	52,207,240
Euston	41,780,096
Charing Cross	36,062,800
Paddington	35,466,715
Stratford	33,256,162
King's Cross	31,360,626
St. Pancras	28,760,490
Clapham Junction	27,667,759
East Croydon	22,479,525
Highbury & Islington	21,705,956
Cannon Street	21,348,259
Vauxhall	20,598,697
Wimbledon	19,663,951
Fenchurch Street	17,851,250
Marylebone	15,756,732
Birmingham New Street	36,719,182
Glasgow Central	29,072,624
Leeds	28,688,869
Manchester Piccadilly	25,169,862
Edinburgh	20,859,773
Gatwick Airport	17,284,711
Brighton	16,724,985

Station name	Passenger numbers
Reading	16,260,797
Glasgow Queen Street	16,055,602
Liverpool Central	15,018,148

Note: those highlighted in blue (the first 18 rows) are London stations, the non-shaded stations are outside of London. Estimates on the number of passengers are 5-year averages between 2012-2013 and 2016-2017. Note that this data is due to be updated for 2017-18 on 11 December 2018.

Source: *Estimate of station usage*, Steer Group, December 2017. This may be accessed [here](#).

Table B2: Stations with an average of between 10m and 15m station entries/exits per year

Station name	Passenger numbers
Canada Water	14,340,790
Blackfriars	12,725,425
Barking	10,458,630
Richmond	10,380,917
Putney	10,222,458
Liverpool Lime Street	14,622,930
Cardiff Central	12,119,240
Cambridge	10,358,618
Bristol Temple Meads	10,154,001

Note: those highlighted in blue (the first 5 rows) are London stations, the non-shaded stations are outside of London. Estimates on the number of passengers are 5-year averages between 2012-2013 and 2016-2017. Note that this data is due to be updated for 2017-18 on 11 December 2018.

Source: *Estimate of station usage*, Steer Group, December 2017. This may be accessed [here](#).

Table B3: Stations with an average of between 5m and 10m station entries/exits per year

Station name	Passenger numbers
Lewisham	9,484,826
Surbiton	9,332,253
Moorgate	9,226,170
Whitechapel	8,827,369
Farringdon	8,546,833
Romford	8,506,412
Waterloo (East)	8,443,691
Balham	8,042,007
Ilford	7,766,025

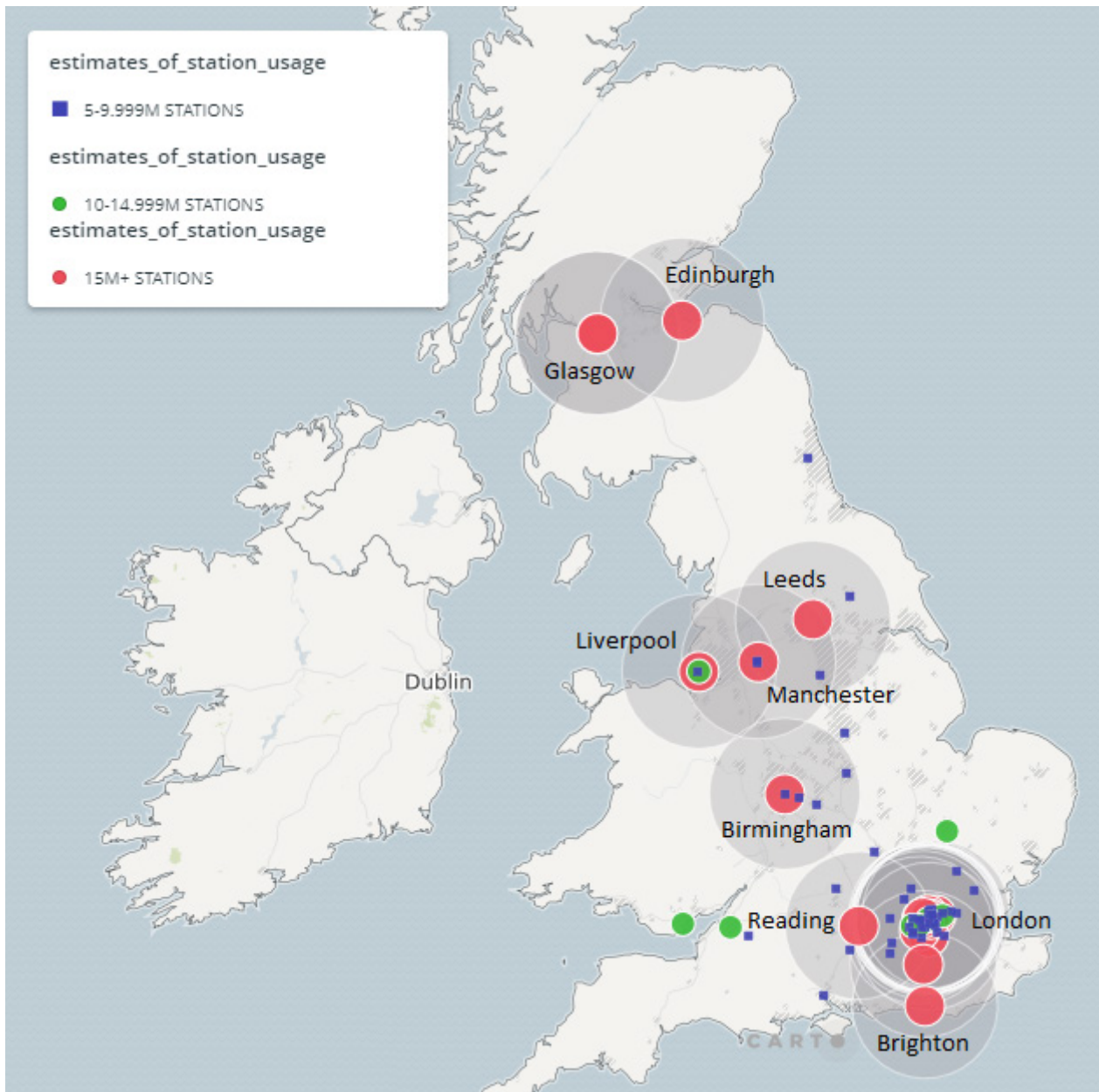
Station name	Passenger numbers
Bromley South	7,422,748
Kensington Olympia	6,970,585
Sutton (Surrey)	6,675,340
Earlsfield	6,569,948
West Ham	6,492,566
Finsbury Park	6,362,672
City Thameslink	6,118,872
Tottenham Hale	5,988,925
Dalston (Kingsland)	5,972,206
Twickenham	5,959,169
Ealing Broadway	5,878,375
Kingston	5,818,954
Denmark Hill	5,784,167
Shepherds Bush	5,764,425
Peckham Rye	5,678,860
Shoreditch High Street	5,542,941
Orpington	5,410,642
Seven Sisters	5,393,285
Hackney Central	5,261,586
New Cross Gate	5,140,034
Upminster	5,092,679
Sheffield	9,019,442
York	8,528,607
Chelmsford	8,339,057
Newcastle	8,100,539
Guildford	8,080,202
Woking	7,822,128
Manchester Oxford Road	7,769,584
Manchester Victoria	7,446,223
St. Albans City	7,273,621
Watford Junction	7,169,697
Nottingham	6,814,771

Station name	Passenger numbers
Moorfields	6,718,645
Milton Keynes Central	6,530,432
Oxford	6,527,161
Birmingham Moor Street	6,505,932
Coventry	6,430,725
Southampton Central	6,308,073
Bath Spa	6,107,386
Slough	5,573,759
Basingstoke	5,526,200
Birmingham International	5,350,411
Stansted Airport	5,105,110
Leicester	5,074,659

Note: those highlighted in blue (the first 30 rows) are London stations, the non-shaded stations are outside of London. Estimates on the number of passengers are 5-year averages between 2012-2013 and 2016-2017. Note that this data is due to be updated for 2017-18 on 11 December 2018.

Source: *Estimate of station usage*, Steer Group, December 2017. This may be accessed [here](#).

Annex C: Map of stations by passenger demand, 40 mile radius



Note: Red circles: >15m; green circles: >10m & ≤15m; blue squares: >5m & ≤10m. Each circle on the map describes an area within 40 miles of a station with more than 15m passengers per year. Estimates of passenger numbers are 5-year averages between 2012-2013 and 2016-2017. Note that this data is due to be updated for 2017-18 on 11 December 2018.

Source: ORR analysis; CARTO; OpenStreetMap contributors; *Estimate of station usage*, Steer Group, December 2017.

Annex D: Worked examples: applying the interurban definition

1. Some worked examples are presented in this Annex. Note that stations with demand above a specific threshold are referred to as S1, and stops at additional stations above another threshold (less than or equal to S1) are defined as S2.
2. Distances are straight-line distances. The 40 mile distance is used in these examples.

Example D1: Interurban service



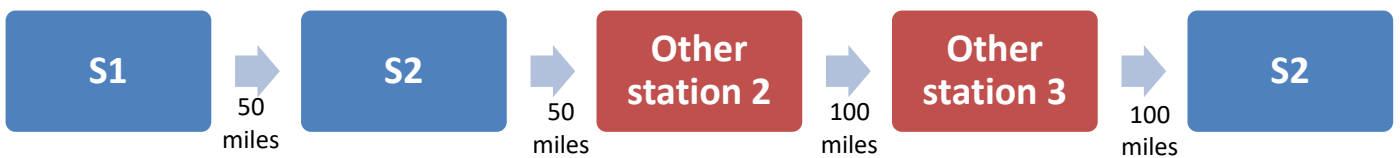
3. This is likely to be an interurban service.

Example D2: Not an interurban service – does not meet distance threshold



4. This is not likely to be an interurban service. While two stations meet the station demand thresholds, they are less than 40 miles apart (the minimum distance proposed).

Example D3: Interurban service



5. Two stations meet station demand threshold S2. The whole service may be in the interurban market segment.

Annex E: Worked example: additional stations included in a two mile radius

1. This annex lists some examples of the additional stations that may fall inside the interurban definition should a two mile radius be applied to S1 and/or S2 (see paragraph 4.22).

Table E1: Examples of additional stations included inside a two mile radius, selected stations

Selected stations (passengers >15m)	Stations within 2 mile radius	Passenger numbers
London Waterloo	Victoria	80,216,363
	Liverpool Street	63,795,994
	Euston	41,780,096
	Charing Cross	36,062,800
	King's Cross	31,360,626
	St. Pancras	28,760,490
	Cannon Street	21,348,259
	Vauxhall	20,598,697
	Fenchurch Street	17,851,250
	Blackfriars	12,725,425
	Farringdon	8,546,833
	Waterloo (East)	8,443,691
	City Thameslink	6,118,872
	Elephant and Castle	3,038,920
Birmingham New Street	Birmingham Moor Street	6,505,932
	Birmingham Snow Hill	4,508,103
	Five Ways	1,499,374
	Jewellery Quarter	397,393
	Duddeston	204,684
	Small Heath	118,685
	Adderley Park	66,133
	Birmingham Bordesley	13,021
Glasgow Central, Glasgow Queen Street	Charing Cross (Glasgow)	2,015,253
	Argyle Street	1,388,225
	High Street	686,149
	Bridgeton	630,688
	Bellgrove	623,940
	Springburn	400,478
	Pollokshields East	379,712
	Crosshill	314,888
	Alexandra Parade	269,273
	Dalmarnock	197,982
	Pollokshields West	182,782
	Maxwell Park	158,253
Dumbreck	146,571	
Duke Street	127,452	

Selected stations (passengers >15m)	Stations within 2 mile radius	Passenger numbers
	Possilpark & Parkhouse	97,047
	Ashfield	71,572
	Barnhill	69,750
Manchester Piccadilly	Manchester Oxford Road	7,769,584
	Manchester Victoria	7,446,223
	Salford Crescent	1,072,145
	Salford Central	382,312
	Deansgate	381,016
	Ashburys	90,341
	Ardwick	696
Liverpool Central	Liverpool Lime Street	14,622,930
	Liverpool James Street	3,161,715
	Birkenhead Hamilton Square	2,056,463
	Sandhills	1,138,030
	Brunswick	915,405
	Edge Hill	167,633

Note: Estimates of passenger numbers are 5-year averages between 2012-2013 and 2016-2017. Note that this data is due to be updated for 2017-18 on 11 December 2018.

Source: *Estimate of station usage*, Steer Group, December 2017. This may be accessed [here](#).



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