

EXPLANATORY MEMORANDUM TO

THE TRAIN DRIVING LICENCES AND CERTIFICATES (AMENDMENT) REGULATIONS 2022 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of the Regulations is to make the necessary amendments to the Train Driving Licences and Certificates Regulations 2010 (the “2010 Regulations”) in order to provide for the continued recognition of EEA issued train driving licences (“European TDLs”) for the Channel Tunnel and cross-border area. The Regulations will also enable certificates that are used as proof of a train driver’s competence to be issued under the 2010 Regulations to cover all of the Channel Tunnel and cross-border area.
- 2.2 The 2010 Regulations (as currently amended) provide for a two-year recognition period (the “Transitional Period”) after the UK’s exit from the EU that currently applies to all European TDLs used in Great Britain. However, the Transitional Period expires on 31 January 2022. The Regulations are therefore required to introduce amendments to the 2010 Regulations to create a regime of permanent recognition for European TDLs when operating in the Channel Tunnel and immediate cross-border zone (up to Ashford International for passenger trains and Dollands Moor for rail freight trains). These amendments are necessary to enable the implementation and ratification of a bilateral agreement,¹ which has been agreed at technical level but is subject to final legal checks and ratification, between the UK and France on the mutual recognition of train driving licences for the Channel Tunnel and cross-border area. The bilateral agreement will therefore also provide for the recognition of train driving licences (“British TDLs”) issued by the ORR under the 2010 Regulations in the French section of the Channel Tunnel and in the immediate cross-border area in France to Calais-Fréthun station (for passenger trains) and Fréthun freight yard.
- 2.3 The bilateral agreement only applies to the use of British and European TDLs in the Channel Tunnel Fixed Link and the cross-border areas between Calais-Fréthun passenger station in France and Ashford International station in the United Kingdom for passenger traffic; and between Calais-Fréthun freight yard in France and Dollands Moor in the United Kingdom for freight traffic. Without these changes, European TDLs would cease to be valid for use in all of Great Britain including the UK section of the Channel Tunnel and immediate cross-border zone from 31 January 2022 onwards once the Transitional Period expires. The bilateral agreement and these Regulations will therefore provide long-term certainty, clarity and confidence to cross-border operators, both current and prospective, regarding the future train driving licensing framework for the Channel Tunnel and reducing administrative burdens on them.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

¹ Made in accordance with Article 8 of Directive (EU) 2007/59/EC (O.J. No. L315, 3.12.2007, p.51, as amended by Commission Directive 2014/82/EU (O.J. No. L184, 25.6.2014, p.11), Commission Directive (EU) 2016/882 (O.J. No. L146, 3.6.2016, p.22) and Commission Regulation (EU) 2019/554 (O.J. No. L97, 8.4.2019, p.1). It is expected that the bilateral agreement will have been formally signed on behalf of both the UK and France by the time the Regulations (currently published in draft form) are formally made following debate in Parliament expected to take place in January 2022.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 N/A.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales and Scotland.

5. European Convention on Human Rights

5.1 The Minister of State for Transport, Chris Heaton-Harris MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Train Driving Licences and Certificates (Amendment) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

6.1 The Train Driving Licences and Certificates (Amendment) Regulations 2022 (“the Regulations”) are made in exercise of the powers conferred by the Channel Tunnel Act 1987, section 11(1)(a), (c), (d) and (g), (2)(a) and (b), and (3) (a).

6.2 The Regulations amend the 2010 Regulations, which transposed the requirements established under Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community (“the 2007 Directive”).

6.3 The 2007 Directive established a common regime for licensing and certifying train drivers in Member States of the European Union with the aim of harmonising the regulatory regimes of different Member States to enable train drivers to move more freely between Member States and employers, who may be railway undertakings (“RUs”) or infrastructure managers (“IMs”). Once issued, TDLs are valid for use for up to 10 years, subject to drivers meeting periodic medical tests every 3 years up to the age of 55 and every year thereafter. A TDL can be issued under the EU regime by any national safety authority of any Member State and demonstrates that a train driver meets the required medical and general professional standards under the 2007 Directive.

6.4 The TDL is supplemented by a mandatory complementary certificate that is issued by an RU or IM to the train drivers. This demonstrates that the holder is authorised to drive on a specific piece of infrastructure once they have passed the necessary training and professional knowledge and competence examinations. A complementary certificate sets out how a train driver has been trained in relation to a RUs or IM’s safety management system (“SMS”). This complementary certificate will cover relevant operational rules, language requirements and route and traction knowledge.

6.5 In Great Britain, TDLs are issued by the Office of Rail and Road (“ORR”). The 2007 Directive was implemented in Great Britain under the 2010 Regulations which have been subsequently amended by four statutory instruments. These include:

- the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/950) which changed the medical codes included within train driving licences to give effect to certain provisions of Commission Regulation (EU) 36/2010;
- the Train Driving Licences and Certificates (Amendment) Regulations 2015 (S.I. 2015/1798), which updated the general professional knowledge and medical and licence requirements for train drivers operating in the EU implementing amendments to the 2007 Directive by Commission Directive 2014/82/EU;
- the Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/677) (“the 2019 Regulations”) which amended the 2010 Regulations to correct inoperabilities and introduce provisions for the continued recognition of European TDLs in

Great Britain issued prior to exit day for two years from exit day (where exit day means 31 January 2020); and

- the Railways (Miscellaneous Amendments, Revocations and Transitional Provisions) (EU Exit) Regulations 2020 (S.I. 2020/786) (“the 2020 Regulations”) which extended recognition provisions so that European TDLs issued up until 31 January 2022 would be valid until that date.

- 6.6 On 24 June 2016, the UK voted to leave the EU and, following the European Union (Withdrawal Agreement) Act 2020, entered a transition period that ended on the 31 December 2020. Since 1 January 2021, British TDLs have not been recognised as valid for use in the EU under EU law, including the French section of the Channel Tunnel. Operators have therefore obtained European TDLs for their drivers to ensure they are able to continue driving their trains.
- 6.7 As part of preparations for the UK leaving the EU, the Department for Transport laid statutory instruments to make corrections to inoperabilities contained in domestic secondary legislation that had implemented EU law. This included the 2019 Regulations, which made corrections to the 2010 Regulations (as amended) and established the Transitional Period for European TDLs issued before exit day (31 January 2020), so as to minimise disruption to cross-border services (the drivers would continue to be able to use European TDLs which would cover the entirety of the route) and to provide sufficient time for train operators and drivers to apply to the Office of Rail and Road (“ORR”) to obtain British TDLs to cover their licensing requirements in the UK, including the UK section of the Tunnel. With the passing of the European Union (Withdrawal Agreement) Act 2020, the 2010 Regulations were further amended by the 2020 Regulations to extend the recognition provisions, so that European TDLs issued after 31 January 2020 and up to 31 January 2022 would also be valid for use in Great Britain up until 31 January 2022.

7. Policy background

What is being done and why?

- 7.1 The policy intention of the Regulations is to make the necessary amendments to domestic train driving legislation to support the implementation of the UK-France bilateral agreement on the mutual recognition of train driving licences for the Channel Tunnel and cross-border area. This will help support the continued smooth operation of Channel Tunnel traffic, which provides significant economic and social benefits to the UK, and will provide long-term certainty, clarity and confidence to cross-border operators regarding the train driving framework for the Channel Tunnel. The Regulations will also make necessary amendments to domestic legislation to widen the scope of application of complementary certificates issued by RUs and IMs for cross-border train drivers to cover infrastructure up to Calais-Fréthun passenger and freight stations enabling a train driver to use one complementary certificate for the purposes of driving trains throughout the Channel Tunnel and immediate cross-border areas.

Explanations

- 7.2 The Regulations amend the 2010 Regulations by permanently extending recognition for European TDLs within a specified geographic scope. This is underpinned by what has been agreed in the proposed bilateral agreement where train drivers in the Channel Tunnel holding a European TDL or a British TDL will be authorised to operate within the respective national parts of the Channel Tunnel and up to the first border crossing station in French or UK territory, that is to say between Calais-Fréthun passenger station in France and Ashford International station in the United Kingdom (for passenger rail); and between Calais Fréthun freight yard in France and Dollands Moor in the United Kingdom (for freight). This means that passenger services and freight services operating between these locations are covered by the bilateral agreement. The Regulations refer to this area of mutual recognition as the “Channel Tunnel zone”. A train driver who is authorised to drive in the Channel Tunnel zone will have a Channel Tunnel train driving licence in the Regulations. Train drivers, who operate beyond the Channel Tunnel zone, are not covered by these recognition arrangements.

- 7.3 The Regulations will provide for the continued recognition of European TDLs for train drivers operating in the Channel Tunnel zone. This will facilitate the implementation and ratification of the proposed bilateral agreement on the mutual recognition of TDLs for the Channel Tunnel, which is contingent upon the amendments made by the Regulations. The provision made by the Regulations for the continued recognition of European TDLs for train drivers operating in the Channel Tunnel zone, and the related bilateral agreement, will have a positive impact on cross-border operators by providing long-term certainty on the train driver licensing requirements for the Channel Tunnel. It will also reduce the administrative burdens on them by enabling them to operate services within the Channel Tunnel and cross-border area without the need to hold two separate licences (one issued in UK and one in the EEA). Moreover, the changes to the 2010 Regulations will enable RUs and IMs to issue a single complementary certificate to train drivers to operate within all of the Channel Tunnel and cross-border area.
- 7.4 Information sharing provisions are also included to give effect to requirements of the proposed bilateral agreement. Under these provisions, the ORR will be able to share information with the equivalent French authority, the *Établissement Public de Sécurité Ferroviaire* (“EPSF”). For example, information may be shared in relation to any doubts or concerns as to the validity of a licence or compliance with licensing requirements on the part of either a holder of a European TDL operating in the Channel Tunnel zone in Great Britain, or a holder of a British TDL operating in the Channel Tunnel zone in France. The bilateral agreement will impose equivalent obligations on EPSF.
- 7.5 As complementary certificates issued in accordance with the 2010 Regulations will now be valid and recognised, under the bilateral agreement, throughout the Channel Tunnel zone (in both the British and French sections), these Regulations also amend the 2010 Regulations so as to require the ORR to cooperate with EPSF if the latter raises concerns as to the competence of a driver to drive a train in the Channel Tunnel zone.
- 7.6 In such a case, the ORR will be required to pass any such concerns onto the RUs or IM which has issued the complementary certificate to the driver, together with any request made by EPSF for the RU or IM to review, suspend or withdraw the complementary certificate. The RU or IM is required to notify the ORR of its response to these concerns and this request and the ORR must then in turn notify EPSF of the outcome. The ORR will also continue to have the power it already has under the 2010 Regulations to raise similar concerns and make a similar request to an IM or RU on its own initiative.
- 7.7 Pending the RU or IM coming to a decision as to the withdrawal or suspension of the complementary certificate in such cases, the ORR has power to prohibit the holder of the certificate from driving a train in Great Britain. Where the certificate in such a case covers the Channel Tunnel zone, the ORR will now be required to notify EPSF of such action, as well as the Intergovernmental Commission for the Channel Tunnel and the Department for Infrastructure in Northern Ireland.
- 7.8 The Regulations also provide for the ORR to have a discretionary power (but not a duty) to share equivalent information in these cases with other licensing authorities in the EEA (in addition to EPSF) where the relevant European TDL has been issued by a licensing authority other than EPSF.
- 7.9 The information sharing and cooperation powers and duties of the ORR are without prejudice to the continuing general duty of the ORR to take immediate necessary action, under regulation 21 of the 2010 Regulations, in any case where the ORR considers a train driver represents a serious threat to the safety of the railways. Such action can include requesting the RU or IM to stop any train being driven by the train driver, withdrawing or suspending the train driver’s TDL, if issued by the ORR or prohibiting the driver (regardless of who has issued the TDL) from driving a train in Great Britain. A breach of such a prohibition (or driving a train while a TDL licence is suspended or withdrawn) will continue to be an offence (see regulation 38(3)(g) of the 2010 Regulations and section 33(1)(c) of the Health and Safety at Work etc. Act 1974 as applied by that regulation).
- 7.10 The Regulations also amend the 2010 Regulations so as to require the ORR to inform EPSF if it has taken any action under regulation 21 (of the 2010 Regulations) in relation to a driver operating in the Channel Tunnel zone. Similarly, the amendments made by the Regulations will also require the ORR to notify EPSF if the ORR suspends or withdraws the British TDL of such a driver or if it is notified

of concerns by the IM or RU deploying the driver. Under the bilateral agreement, EPSF will have equivalent obligations in relation to the holders of European TDLs.

- 7.11 The UK and France have negotiated (subject to signature) a bilateral agreement for the mutual recognition of British TDLs and of European TDLs in the Channel Tunnel. This is being made, as far as France and the EU are concerned, in accordance with Article 8 of Directive (EU) 2007/59/EC. It will provide long-term certainty, clarity and confidence to cross-border train drivers, both current and prospective, and remove administrative burdens for cross-border operators. Although a bilateral agreement has been agreed, the UK still needs to implement the agreement through these Regulations which will allow the bilateral agreement to then be ratified under the Constitutional Reform and Governance Act 2010.
- 7.12 These Regulations need to come into force by 31 January 2022 because this is when the Transitional Period ends. Without these changes, EU TDLs will not be valid in the UK section of the Channel Tunnel from 31 January 2022, which the Regulations refer to as the British Channel Tunnel zone. The alternative option is for cross-border operators to relicence their cross-border train drivers so that they possess both British and European TDLs, however this would be more complex and burdensome for both these operators and the ORR who would need to process these applications. As a result, the solution provided by this Instrument is preferable to relicensing and provides longer term certainty.
- 7.13 European TDLs will cease to be valid in Great Britain, including the Channel Tunnel, after 31 January 2022 unless further legislation is introduced to amend the existing legislative arrangements. As the UK is in the final stages of reaching a bilateral agreement for the mutual recognition of UK and EU TDLs in the Channel Tunnel, the UK now needs to amend the 2010 Regulations to give effect to this agreement, while it is expected that reciprocal arrangements will be provided for in France. Once this instrument comes into force, the practical impact will be that European TDLs will be valid in the UK section of the Channel Tunnel. Complementary certificates issued by an RU or IM to a cross-border train driver under the 2010 Regulations will cover a train driver's certification requirements in the UK and French sections of the Channel Tunnel and cross-border area, enabling a driver to use one complementary certificate for the purposes of operating services through all of the Channel Tunnel. The Regulations refer to these as a Channel Tunnel train driving certificate.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union only in so far as the Regulations make amendments to the 2010 Regulations which are within the definition of retained EU law in the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 There are no plans to consolidate this legislation.

10. Consultation outcome

- 10.1 The amendments proposed by this Instrument apply only to the Channel Tunnel and the cross-border area up to Ashford International and Dollands Moor. They affect a very limited number of cross-border operators and will not introduce any new requirements on train drivers or require any new licences to be granted, hence DfT officials considered that there was no requirement for formal consultation on the proposed amendments. However, these stakeholders have been engaged throughout the development of the bilateral agreement and have expressed support for the overall approach. This is because the measures introduced by the Instrument will have a significant positive impact on the affected cross-border operators as they will support the continued smooth operation of services through the Channel Tunnel and provide long-term certainty, clarity and confidence to operators, both current and prospective, on the train driver licensing requirements for the Channel Tunnel. They will also considerably reduce administrative burdens on cross-border rail freight operators, whose drivers, together with those of the shuttles operated by Eurotunnel, will only need to

hold a single train driver licence and certificate in order to continue to drive shuttles and freight trains in the Channel Tunnel and the cross-border area. The Department has also worked closely with the ORR in developing this instrument, recognising ORR's status and expertise as the independent licensing authority and safety regulator and who are supportive of the measure.

- 10.2 The Department for Transport undertook a survey on the proposed changes which are given effect by this instrument from 6 October 2021 to 15 October 2021. The survey invited views from affected stakeholders directly involved in the Channel Tunnel and bodies with an interest in the Tunnel's operations, including Eurotunnel, Eurostar International Limited, DB Cargo UK, GB Railfreight Limited, Rail Delivery Group, Rail Freight Group, HS1 Limited, Network Rail, the IGC, EPSF and the Associated Society of Locomotive Engineers and Firemen ("ASLEF").
- 10.3 Respondents to the survey supported the proposals to implement a bilateral agreement and provide for the continued recognition of EU TDLs in the Channel Tunnel and cross-border area. Stakeholders recognised that the approach being taken will support the continuity of cross-border services and reduce administrative costs and burdens for businesses.
- 10.4 The Department for Transport considers that the least costly and disruptive approach is to correct, rather than revoke, the 2010 Regulations, for the following reasons:
- No formal consultation has taken place on the possible revocation of the 2010 Regulations or the subsequent amending Regulations, or of wider amendments to them, and there would be insufficient time to undertake and act upon a full consultation before 31 January 2022.
 - Any delay beyond that date to the implementation of these Regulations and the related bilateral agreement would impose burdens on RUs and IMs to obtain UK TDLs and complementary certificates.
 - In the absence of a full consultation with stakeholders who would be affected, revoking the 2010 Regulations and subsequent relevant amending Regulations, would be likely to create uncertainty and confusion. A wider revocation or amendment of the 2010 Regulations (or subsequent amendments to them) would also need to be considered much more generally, in particular to assess potential safety and other impacts of deregulating in this area.
 - The Regulations will contribute to supporting the continuation of cross-border rail services through the Channel Tunnel, providing certainty, clarity and confidence to operators and train drivers.
 - The Department has been engaging very regularly with all affected stakeholders whilst developing the Regulations, keeping them updated on the bilateral negotiations with France, which this legislation supports, and the expected outcome. Stakeholders have been very supportive of the policy objectives being pursued in these negotiations
 - It is unlikely the powers used to make this Instrument in the Channel Tunnel Act 1987 would in any event support wider revocation, amendments or consolidation.
- 10.5 The devolved administrations have been kept informed throughout the drafting process of this instrument, and have not raised any objections to the changes.

11. Guidance

- 11.1 The Department is not producing guidance on the specific amendments provided for in this Instrument as they affect only a limited number of stakeholders, with whom the Department engages on a very regular basis.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An de minimis impact assessment has been prepared for this instrument and concluded that the overall costs or benefits to business will be less than £5 million per year. This is because the proposed amendments will not introduce any new requirements on the affected train drivers or require any new

TDLs to be granted, and will therefore not have any substantive operational impact. The de minimis impact assessment will be published on legislation.gov.uk.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 Regulation 40 of the 2010 Regulations requires the Secretary of State for Transport to review the Regulations every five years and to publish the results and conclusions. The next review is due on 21 May 2023 and will be completed during normal parliamentary business.

15. Contact

15.1 Ian Jones, Head of Safety and Standards at the Department for Transport, or Bertie Bricusse, Policy Advisor for Rail Safety Department for Transport, can be contacted with any queries regarding the instrument: Ian Jones: Telephone: Mobile 07917 883579, or email: ian.jones@dft.gov.uk
Bertie Bricusse: Telephone: 07970 335273 or email: bertie.bricusse@dft.gov.uk

15.2 Andrea Pearson, Deputy Director, International Rail and Rail Freight, at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State for Transport, Chris Heaton-Harris MP, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	<p>Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	<p>Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2</p> <p>In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs</p>	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required

under the European Union (Withdrawal) 2018 Act

1. Scrutiny statement where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

- 1.1 The Minister of State, Chris Heaton-Harris, has made the following scrutiny statement regarding this instrument:
- 1.2 “I have taken the following steps to make the draft instrument published in accordance with paragraph 14(2) of Schedule 8 to the European Union (Withdrawal) Act 2018 available to each House of Parliament: a draft of the Train Driving Licences and Certificates (Amendment) Regulations 2022 was published on the Gov.UK website on 18 October 2022 and a Written Ministerial Statement was tabled in the House of Commons on 18 October 2022. The clerks to the European Scrutiny Committee, the Transport Select Committee and the House of Lords Secondary Legislation Scrutiny Committee were also notified of the publication of the draft of the instrument.
- 1.3 [The following recommendations were made and responded to as follows].”

2. Explanation where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

- 2.1 The Minister of State, Chris Heaton-Harris, has made the following statements regarding the amendment of regulations made under the European Communities Act 1972:

“In my opinion there are good reasons for the Train Driving Licences and Certificates (Amendment) Regulations 2022 to amend the Train Driving Licences and Certificates Regulations 2010 (S.I. 2010/724). This is because of the essential need to implement a proposed bilateral agreement expected to be entered into with France in 2022, subject to final clearances, for the mutual recognition of train driving licences for rail traffic in the Channel Tunnel and cross-border area between Calais-Fréthun passenger station in France and Ashford International station in the United Kingdom; and between Calais-Fréthun freight yard in France and Dollands Moor in the United Kingdom (the “Channel Tunnel zone”). This agreement will support cross-border operators by reducing administrative costs and burdens associated with ensuring cross-border drivers possess the necessary train driving licences to operate services through the Channel Tunnel and cross-border zone. The coming into force of these regulations on 31 January 2022 will support this agreement.
- 2.2 Requirements relating to train driving licences and certificates are currently contained in Train Driving Licences and Certificates Regulations 2010 (S.I. 2010/724) (the “2010 Regulations”). The 2010 Regulations were made under section 2(2) of the European Communities Act 1972, and therefore constitute EU-derived domestic legislation (which is retained EU law) within the meaning of the European Union (Withdrawal) Act 2018. The 2010 Regulations implemented into domestic law the requirements of an EU Directives (Council Directive 2007/59/EC), which sets out the conditions regarding the required medical and general professional standards to hold a train driving licence under the 2007 Directive. The 2010 Regulations were amended by a further four statutory instruments: SI 2013/950, to give effect to Commission Regulation (EU) 36/2010 which changed the medical codes included within train driving licences; SI 2015/1798, to give effect to Commission Directive 2014/82/EU; SI 2019/677, to correct inoperabilities and introduce provisions for the continued recognition of EEA issued TDLs in Great Britain issued prior to exit day for two years from exit day; and SI 2020/786, which extended recognition provisions so that EEA issued TDLs issued up until 31 January 2020 continue to be valid in Great Britain until 31 January 2022.
- 2.3 The amendments to the 2010 Regulations made by this Statutory Instrument will provide for continued recognition after 31 January 2022 in Great Britain for EU TDLs issued under the 2007 Directive (as amended) in the Channel Tunnel zone. The amendments to the 2010 Regulations will also widen the

scope of application of complementary certificates issued by Railway Undertakings and Infrastructure Managers for cross-border train drivers so that these can cover infrastructure up to Calais-Fréthun passenger and freight stations on the French side. This will enable a driver to use one complementary certificate for the purposes of driving trains throughout the whole Channel Tunnel zone.

- 2.4 The amendments also provide for information sharing and cooperation between the Office of Rail and Road (the “ORR”) and EPSF. Information may be shared in relation to any doubts or concerns as to the validity of a licence or compliance with licensing requirements on the part of either a holder of a European TDL operating in the Channel Tunnel zone in Great Britain, or a holder of a British TDL holder operating in the Channel Tunnel zone in France. The bilateral agreement will impose equivalent obligations on EPSF.
- 2.5 As complementary certificates issued in accordance with the 2010 Regulations will now be valid and recognised, under the bilateral agreement, throughout the Channel Tunnel zone (in both the British and French sections), the amendments being made to the 2010 Regulations will also require the ORR to cooperate with EPSF if the latter raises concerns as to the competence of a driver to drive a train in the Channel Tunnel zone.
- 2.6 In such a case, the ORR will be required to pass any such concerns onto the railway undertaking (“RU”) or infrastructure manager (“IM”) which has issued the complementary certificate to the driver, together with any request made by EPSF for the RU or IM to review, suspend or withdraw the complementary certificate. The RU or IM will be required to notify the ORR of its response to these concerns and this request and the ORR will in turn then be required to notify EPSF of the outcome. The ORR will also continue to have the power it already has under the 2010 Regulations to raise similar concerns and make a similar request to an IM or RU on its own initiative.
- 2.7 Pending the RU or IM coming to a decision as to the withdrawal or suspension of the complementary certificate in such cases, the ORR will have power to prohibit the holder of the certificate from driving a train in Great Britain. Where the certificate in such a case covers the Channel Tunnel zone, under the amendments being made, the ORR will be required to notify EPSF of such action as well as the Intergovernmental Commission for the Channel Tunnel and the Department for Infrastructure in Northern Ireland.
- 2.8 The amendments being made to the 2010 Regulations also provide for the ORR to have a discretionary power (but not a duty) to share equivalent information in these cases with other licensing authorities in the EEA (in addition to EPSF) where the relevant European TDL has been issued by a licensing authority other than EPSF.
- 2.9 The information sharing and cooperation powers and duties of the ORR are without prejudice to the existing general duty of the ORR to take immediate necessary action, under regulation 21 of the 2010 Regulations, in any case where the ORR considers a train driver represents a serious threat to the safety of the railways. Such action can include requesting the RU or IM to stop any train being driven by the train driver, withdrawing or suspending the driver’s TDL, if issued by the ORR or prohibiting the driver (regardless of who has issued the TDL) from driving a train in Great Britain.
- 2.10 The amendments being made 2010 Regulations will require the ORR to inform EPSF if it has taken any action under regulation 21 (of the 2010 Regulations) in relation to a driver operating in the Channel Tunnel zone. Similarly, the amendments to the 2010 Regulations will also require the ORR to notify EPSF if the ORR suspends or withdraws the British TDL of such a driver or if it is notified of concerns by the IM or RU deploying the driver. Under the bilateral agreement, EPSF will have equivalent obligations in relation to the holders of European TDLs.”