

2019 No.

**EXITING THE EUROPEAN UNION**

**TRANSPORT**

**The Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019**

*Sift requirement satisfied*

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*Made - - - -*

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*Laid before Parliament*

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*Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(b).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to railways and railway transport(c).

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

**PART 1**

**Introduction**

**Citation, extent and commencement**

1.—(1) These Regulations may be cited as the Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019.

(2) Parts 2 and 5 of, and the Schedule to, these Regulations do not extend to Northern Ireland.

(3) These Regulations come into force as follows—

- (a) regulations 9(a), 13(b) and (c) and 21(b) come into force 21 days after having been laid or on exit day, whichever is the earlier date;

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(a) 1972 c. 68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(b) 2018 c. 16.

(c) S.I. 1996/266, to which there are amendments not relevant to these Regulations.

- (b) the remaining provisions come into force on exit day.

## PART 2

### Amendment of subordinate legislation

#### **Amendment of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016**

**2.** The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016<sup>(a)</sup> are amended as set out in regulations 3 to 24.

**3.** In regulation 3 (interpretation)—

- (a) for the definition of “cross-border agreement” substitute ““cross-border agreement” means any agreement between the United Kingdom and any other country intended to facilitate the provision of cross-border rail services”;
- (b) in the definition of “international passenger service” for “at least one border of a Member State” substitute “the border between the United Kingdom and a member State” and for “in different Member States substitute “in the United Kingdom and a member State”;
- (c) after the definition of “mine” insert—  
““national authority” means the Secretary of State, the Scottish Ministers or the Welsh Ministers;”
- (d) in the definition of “railway undertaking” for “Directive” substitute “Railway (Licensing of Railway Undertakings) Regulations 2005<sup>(b)</sup>”;
- (e) omit the definition of “the Treaty”.

**4.** In regulation 4 (scope), in paragraph (2)(b), for “the railway undertakings established or to be established in an EEA State” substitute “railway undertakings”.

**5.** In regulation 5 (access rights)—

- (a) in paragraph (4) for “stations located in the same Member State” substitute “where both stations are located in the United Kingdom”;
- (b) in paragraph (6) omit “which are in accordance with the law of the European Union”.

**6.** In regulation 7 (cross-border agreements), omit paragraphs 2 to 4.

**7.** In regulation 8 (management independence), in paragraph (1), for “Member State” substitute “national authority”.

**8.** In regulation 11 (indicative railway infrastructure strategy) omit sub-paragraphs 1(b) and 2(b).

**9.** In regulation 13 (network statement)—

- (a) in paragraph (4), after subparagraph (i), insert—  
“(ia) where an infrastructure manager does not propose framework agreements and does not have such agreements in operation, a statement to that effect;”;
- (b) in paragraph (5), for the words from “Article 35” to the end of the paragraph, substitute “regulation 35 of the Railways (Interoperability) Regulations 2011<sup>(c)</sup>”;
- (c) in paragraph (12), after “cooperation with”, insert “other” and omit “from other Member States”.

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<sup>(a)</sup> S.I. 2016/645, amended by S.I. 2019/82

<sup>(b)</sup> S.I. 2005/3050, amended by S.I. 2009/2054, 2010/439, 2012/2404, 2011/1043, 2015/1682, 2016/481, 2016/645.

<sup>(c)</sup> S.I. 2011/3066, to which relevant amendments are made by S.I. 2015/2022.

**10.** In regulation 15 (infrastructure costs and accounts), in paragraph (6), for “Annex V of the Directive”, substitute “Schedule 4A”.

**11.** In regulation 18 (co-operation in relation to charging systems on more than one network)—

- (a) in paragraph (1), for “of the rail system within the European Union” substitute “, including train services which cross between a network in the United Kingdom and a network in the European Union”;
- (b) in paragraph (3) for “of the rail system within the European Union” substitute “, including traffic crossing between a network in the United Kingdom and a network in the European Union”.

**12.** In regulation 20 (co-operation in the allocation of infrastructure capacity crossing more than one network)—

- (a) in paragraph (1) for “of the rail system within the European Union” substitute “, including a train path which crosses between a network in the United Kingdom and a network in the European Union”;
- (b) after paragraph (2) insert—

“(2A) Infrastructure managers required to cooperate in the allocation of infrastructure capacity crossing more than one network by paragraph (2)(a), must provide, without delay, all the information requested by the Office of Rail and Road which is necessary for the purpose of handing an appeal or an own initiative investigation on issues of access or charging relating to an international train path.”;
- (c) in paragraph (5), for “European Union law on rail freight oriented networks” substitute “Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight”;
- (d) in paragraph (6) for “European Union” substitute “United Kingdom”;
- (e) omit paragraph (7);
- (f) in paragraph (8) for “under Part 6” substitute “under paragraph 12 and Part 6”;
- (g) after paragraph (11) insert—

“(12) The Office of Rail and Road must review decisions and practices of infrastructure managers required to co-operate over train services which cross more than one network under this regulation, that implement provisions in these Regulations or which otherwise facilitate international rail transport.”.

**13.** In regulation 21 (framework agreements)—

- (a) in paragraph (1) omit “and without prejudice to articles 101, 102 and 106 of the Treaty”;
- (b) in paragraph (17), at the beginning, insert “Subject to paragraphs 18 to 21,”;
- (c) after paragraph (17) insert—

“(18) Where prior approval of framework agreements by the Office of Rail and Road in accordance with section 18 of the Railways Act 1993(a) is required, Articles 8(2), 9(3) to (6) and 10 of the Commission Implementing Regulation referred to paragraph (17) do not apply.

(19) If an infrastructure manager does not propose framework agreements and does not have such agreements in operation, Articles 1 to 11 and Article 13 of the Commission Implementing Regulation referred to paragraph (17) do not apply to its network.

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(a) 1993 c. 43. Section 18 is amended by the Transport Act 2000 (c. 38), sections 212(6) and 230(1) and (2), Schedule 27, paragraphs 17 and 22, and Schedule 31, Part 4; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, Part 1, paragraphs 1 and 3(b); the Railways Act 2005 (c. 14), Schedule 1, Part 1, paragraph 12(1) and (3); S.I. 2005/3049, Schedule 1, Part 1, paragraph 4(c); and S.I. 2015/1682, Schedule, Part 1, paragraph 1(z).

(20) Subject to paragraph (21), for framework agreements concluded before 28th April 2016, Articles 6(2), 7 to 11 and 13 of the Commission Implementing Regulation referred to paragraph (17) do not apply until 28th April 2021.

(21) Paragraph (20) does not apply to amendments to framework agreements agreed after 28th April 2016 which would involve an increase of the allocated framework capacity or an extension of the duration of the framework agreement.”.

**14.** In regulation 25, (declaration of specialised infrastructure), in paragraph (2), omit “without prejudice to articles 101, 102 and 106 of the Treaty,”.

**15.** In regulation 26 (congested infrastructure), in paragraph (7), for “at least one border of a Member State” substitute “the border between the United Kingdom and the European Union”.

**16.** In regulation 31 (regulatory body), in paragraph (1) for the words “and consistent with the Directive” substitute “and so far as is consistent with these Regulations”.

**17.** In regulation 33 (regulatory decisions concerning international passenger services), in paragraph (1), for “in different Member States” substitute “in the United Kingdom and a member State”.

**18.** In regulation 34 (monitoring the rail services markets) omit paragraphs (9) and (10).

**19.** In regulation 36 (provision of information to the regulatory body), in paragraph (1)(a)(iii) for “subordinate legislation made for the purposes of implementing Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)” substitute “the Railways (Access, Management and Licensing Railway Undertakings) Regulations 2016”.

**20.** Omit regulation 37 (cooperation between regulatory bodies).

**21.** In Schedule 3 (access charging)—

(a) in paragraph 1, in sub-paragraph (5), after “the infrastructure manager must” insert “, subject to sub-paragraphs (5A) and 5(B),”;

(b) after sub-paragraph (5) insert—

“(5A) For the purposes of the calculation of direct costs on a network-wide basis, referred to in paragraph 1 of Article 3 of the Commission Implementing Regulation referred to in sub-paragraph 5, the infrastructure manager may apply the costs of efficient service provision.

(5B) For the purposes of calculating the direct unit costs referred to in paragraph 1 of Article 5 of the Commission Implementing Regulation referred to in sub-paragraph 5, the infrastructure manager may modulate the average direct unit costs to take into account the different levels of wear and tear caused to the infrastructure according to one or more of the parameters listed in paragraph 2 of Article 2 of that Commission Implementing Regulation.”;

(c) in paragraph 6, in sub-paragraph (1), omit “Subject to the provisions of articles 101, 102, 106 and 107 of the Treaty, and”.

**22.** In Schedule 4 (timetable for the allocation process), in paragraph 2, in the last sentence, for “must” substitute “may”.

**23.** After Schedule 4, insert new Schedule 4A, as set out in the Schedule to these Regulations.

**24.** Schedule 6 is amended as follows—

(a) in paragraph 2 (interpretation) in sub-paragraph (m), in the definition of “vertically integrated undertaking”, for “Member State” substitute “national authority”;

(b) in paragraph 7, omit inserted regulation 13B (European Network of Infrastructure Managers) and the heading to that inserted regulation;

(c) omit paragraph 15 (cooperation between regulatory bodies).

## PART 3

### Revocation of retained EU law

#### Revocation of retained EU law

**25.** The following retained EU law is revoked—

- (a) Commission Implementing Regulation (EU) 2015/1100 of 7 July 2015 on the reporting obligations of Member States in the framework of rail market monitoring;
- (b) Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services;
- (c) Commission Delegated Decision (EU) 2017/2075 of 4 September 2017 replacing Annex VII to Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area.

## PART 4

### Amendment of retained EU law

#### Commission Implementing Regulation (EU) No 869/2014 of 11 August 2014 on new rail passenger services

**26.** Commission Implementing Regulation (EU) No 869/2014 of 11 August 2014 on new rail passenger services is amended as set out in regulations 27 to 43.

**27.** Save where these Regulations provide otherwise, for “regulatory body”, in each instance where it occurs, substitute “Office of Rail and Road”.

**28.** In Article 1(a) for “different Member States” substitute “in the United Kingdom and a Member State”.

**29.** In Article 2 (definitions)—

- (a) in the definition of ‘principal purpose test’ for the first instance of the word “a”, substitute “the”;
- (b) in the definition of ‘economic equilibrium test’, for the first instance of the word “a” substitute “the” and omit the words from “, only applicable in Member States” to “one or more public service contracts,”;
- (c) after the definition of ‘net financial effect’ insert—
  - “(7) ‘2016 GB Regulations’ means the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016.
  - (8) ‘2016 NI Regulations’ means the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016(a).”.

**30.** In Article 3 (notification of a planned new international rail passenger service)—

- (a) in paragraph 1, for “regulatory bodies concerned” substitute “Office of Road and Rail”;
- (b) in the opening words of paragraph 2 for “Regulatory Bodies”, substitute “The Office of Rail and Road” and for “their” substitute “its”;
- (c) in paragraph 2, at point (g) for “different” substitute “the United Kingdom and one or more”;
- (d) in paragraph 5, for “in national law” substitute “under any enactment or rule of law”.

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(a) S.R. 2016 No. 420, amended by S.R. [ ]

**31.** In Article 4 (time frame to request a principal purpose test or an economic equilibrium test), in paragraph 2, for “different” substitute “the United Kingdom and one or more”.

**32.** In Article 6 (information to be provided in the request for a principal purpose test)—

- (a) in paragraph 1, at point (d), for “different” substitute “the United Kingdom and one or more”;
- (b) in paragraph 3, for “Regulatory bodies” substitute “The Office of Road and Rail” and for “their websites” substitute “its website”.

**33.** In Article 7 (procedure for the principal purpose test), in paragraph 2, for “Article 56(8) of Directive 2012/34/EU” substitute “section 80 of the Railways Act 1993<sup>(a)</sup>, as modified by regulation 36(1) of the 2016 GB Regulations or, as the case may be, regulation 36(1) of the 2016 NI Regulations”.

**34.** In Article 8 (assessment criteria for the principle purpose test)—

- (a) in paragraph 2, at point (a), for “Member State where the regulatory body is established” substitute “United Kingdom”;
- (b) in paragraph 2, at point (b), for “different” substitute “the United Kingdom and one or more”.

**35.** In Article 9 (result of the principal purpose test)—

- (a) in paragraph 1(a) for “different” substitute “the United Kingdom and one or more”;
- (b) in paragraph 1(b) for “Member State where the regulatory body is located” substitute “United Kingdom”;
- (c) in paragraph 3, for the final sentence substitute—  
“The applicant shall then apply for access to railway infrastructure within the framework and specific capacity allocation rules established under regulation 19(1) and (3) of the 2016 GB Regulations or, as the case may be, regulation 19(1) and (2) of the 2016 NI Regulations for the allocation of capacity for services between stations located within the United Kingdom.”

**36.** In Article 10 (entities having the right to request an economic equilibrium test)—

- (a) in the opening words, for “a Member State concerned by the proposed new international rail service” substitute “the United Kingdom”;
- (b) in point (b) for “under Article 11 of Directive 2012/34/EU” substitute “along the route of the passenger service notified under regulation 19(7) of the 2016 GB Regulations or, as the case may be, regulation 19(7) of the 2016 NI Regulations”.

**37.** In article 11 (information requirements for the economic equilibrium test)—

- (a) in paragraph 2, at point (d), for “Chapter IV, Section 3 of Directive 2012/34/EU” substitute “Part 5 of the 2016 GB Regulations or, as the case may be, Part 5 of the 2016 NI Regulations”;
- (b) in paragraph 3, for “in national law” substitute “under any enactment or rule of law”.

**38.** In Article 12 (procedure for the economic equilibrium test), paragraph 2, for “Article 56(8) of Directive 2012/34/EU” substitute “section 80 of the Railways Act 1993, as modified by regulation 36(1) of the 2016 GB Regulations or, as the case may be, regulation 36(1) of the 2016 NI Regulations”.

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(a) 1993 c. 43. Section 80 is amended by the Transport Act 2000 (c. 38), Schedule 27, paragraphs 17 and 38 and Schedule 31, Part 4; the Railways Act 2005 (c. 14), Schedule 1, Part 1, paragraph 33 and Schedule 11, paragraphs 1 and 12; S.I. 2005/3050, Schedule 1, Part 1, paragraphs 3(1) and 7 and S.I. 2015/1682, Schedule, Part 1, paragraph 1(xx). Section 80 is also modified by regulation 36 of S.I. 2016/645.

**39.** In Article 15 (result of the economic equilibrium test), in paragraph 1, for “Article 11(1) of Directive 2012/34/EU” substitute “regulation 33 of the 2016 GB Regulations or, as the case may be, regulation 33 of the 2016 NI Regulations”.

**40.** In Article 16 (reconsideration of a decision resulting from the economic equilibrium test), in paragraph 1, for “Article 11(3) of Directive 2012/34/EU” substitute “regulation 33(4) of the 2016 GB Regulations or, as the case may be, regulation 33(4) of the 2016 NI Regulations”.

**41.** In Article 17 (cooperation of the regulatory body with other regulatory bodies competent for the proposed new service)—

- (a) in paragraph 1—
  - (i) in the first sentence, for “shall” substitute “may”;
  - (ii) omit the second and third sentences;
- (b) in paragraph 2, for “shall” substitute “may”;
- (c) in paragraph 3—
  - (i) in the first sentence, for “Regulatory bodies shall” substitute “The Office of Rail and Road may”;
  - (ii) in the second sentence, for “They” substitute “If it does so, it”.
- (d) in paragraph 4—
  - (i) in the first sentence for “regulatory bodies,” substitute “the Office of Rail and Road”;
  - (ii) in the second sentence, for “They” substitute “If the Office of Rail and Road is provided with any information from a regulatory body in a Member State under this Article as it continues to have effect in the EU, it”.

**42.** In Article 19 (methodology)—

- (a) in paragraph 1 for “regulatory bodies” substitute “Office of Rail and Road”;
- (b) in paragraph 2 for “regulatory bodies” substitute “the Office of Rail and Road”.

**43.** After Article 20 (entry into force), omit the words from “This Regulation” to “Member States.”.

**Commission Implementing Regulation (EU) 2015/10 of 6 January 2015 on criteria for applicants for rail infrastructure capacity and repealing Implementing Regulation (EU) No 870/2014**

**44.** Commission Implementing Regulation (EU) 2015/10 of 6 January 2015 on criteria for applicants for rail infrastructure capacity and repealing Implementing Regulation (EU) No 870/2014 is amended as set out in regulations 45 to 48.

**45.** In Article 2, in the opening words, for “definition applies” substitute “definitions apply”, and before the definition of ‘financial guarantee’ insert—

“‘2016 GB Regulations’ means the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016.

‘2016 NI Regulations’ means the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016.”.

**46.** In Article 5 (capability to prepare compliant bids for infrastructure capacity)—

- (a) for “, within the meaning of Article 41(2) of Directive 2012/34/EU” substitute “in accordance with conditions established by the infrastructure manager under regulation 19(17) to (19) of the 2016 GB Regulations or, as the case may be, regulation 19(16) to (18) of the 2016 NI Regulations”;
- (b) for “referred to in Article 27 of Directive 2012/34/EU and in Annex IV of that Directive” substitute “as defined in the 2016 GB Regulations or, as the case may be, the 2016 NI Regulations”;

(c) for “regulatory body” substitute “Office of Rail and Road”.

**47.** Omit Articles 6 and 7.

**48.** After Article 8, omit the words from “This Regulation” to “Member States.”.

**Commission Implementing Regulation (EU) 2015/909 of 12 June 2015 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service**

**49.** Commission Implementing Regulation (EU) 2015/909 of 12 June 2015 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service is amended as set out in Articles 50 to 58.

**50.** For “regulatory body”, in each instance where it occurs, substitute “Office of Rail and Road”.

**51.** In Article 1 (subject matter and scope), in paragraph 1, for “Article 31(3) of Directive 2012/34/EU” substitute “paragraph 1(4) of Schedule 3 to the 2016 GB Regulations or, as the case may be, paragraph 1(4) of Schedule 2 to the 2016 NI Regulations”.

**52.** In Article 2 (definitions), after the definition of ‘cost centre’ insert—

“(4) ‘2016 GB Regulations’ means the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016.

(5) ‘2016 NI Regulations’ means the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016”.

**53.** In Article 3, omit paragraph 2.

**54.** In Article 4 (non-eligible costs)—

(a) in paragraph 1, at point (j), for “Article 35 of Directive 2012/34/EU” substitute “regulation 16 of, and paragraph 7 of Schedule 3 to, the 2016 GB Regulations or, as the case may be, regulation 16 of, and paragraph 7 of Schedule 2 to, the 2016 NI Regulations”;

(b) in paragraph 1, at point (l), for “item 1(f)” of Annex II to Directive 2012/34/EU” substitute “paragraph 1(b)(iv) of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 1(b)(iv) of Schedule 1 to the 2016 NI Regulations”;

(c) in paragraph 1, omit point (m);

(d) in paragraph 2, for “Article 32 of Directive 2012/34/EU” substitute “paragraphs 2 to 5 of Schedule 3 to the 2016 GB Regulations or, as the case may be, paragraphs 2 to 5 of Schedule 2 to the 2016 NI Regulations”.

**55.** In Article 5 (calculation and modulation of direct unit costs)—

(a) in paragraph 1, in the second paragraph, omit “referred to in Article 55 of Directive 2012/34/EU”;

(b) in paragraph 2, for the opening words, substitute “The parameters referred to in paragraph 1 are:”;

(c) in paragraph 4, for “Article 46 of Directive 2012/34/EU” substitute “regulation 23 of the 2016 GB Regulations or, as the case may be, regulation 23 of the 2016 NI Regulations”.

**56.** In Article 7 (simplified control)—

(a) in paragraph 1, for “Article 56(2) of Directive 2012/34/EU” substitute “regulation 34(1) and (2) of the 2016 GB Regulations or, as the case may be, regulation 34(1) and (2) of the 2016 NI Regulations”;

(b) in paragraph 3, for “Articles 31 or 56 of Directive 2012/34/EU” substitute “regulation 34(1) and (2) of the 2016 GB Regulations or, as the case may be, regulation 34(1) and (2) of the 2016 NI Regulations”.



57. Omit Article 9.

58. After Article 10 omit the words from “This Regulation” to “Member States.”.

**Commission Implementing Regulation (EU) 2016/545 of 7 April 2016 on procedures and criteria concerning framework agreements for the allocation of rail infrastructure capacity**

59. Commission Implementing Regulation (EU) 2016/545 of 7 April 2016 on procedures and criteria concerning framework agreements for the allocation of rail infrastructure capacity is amended as set out in regulations 60 to 73.

60. For “regulatory body”, in each instance where it is used, substitute “Office of Rail and Road”.

61. In Article 2 (definitions)—

(a) for “Article 3 of Directive 2012/34/EU” substitute “regulation 3 of the 2016 GB Regulations or, as the case may be, regulation 2 of the 2016 NI Regulations”;

(b) after the definition of ‘control period’ insert—

“(5) ‘2016 GB Regulations’ means the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016.

(6) ‘2016 NI Regulations’ means the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016.”.

62. In Article 3 (framework capacity statements), in paragraph 3—

(a) for “Article 42(7) of Directive 2012/34/EU” substitute “regulation 21(13) of the 2016 GB Regulations or, as the case may be, regulation 21(11) of the 2016 NI Regulations”;

(b) for the second sentence substitute “Regulation 13(8) and (10) of the 2016 GB Regulations or, as the case may be, regulation 13(8) and (10) of the 2016 NI Regulations shall also apply to the framework capacity statement.”.

63. In Article 4 (alignment of network statements), omit the words from “and publish” to the end.

64. In Article 5 (allocation of framework capacity), in paragraph 5, for “Article 47(1) of Directive 2012/34/EU” substitute “regulation 26(1) and (2) of the 2016 GB Regulations or, as the case may be, regulation 26(1) and (2) of the 2016 NI Regulations”.

65. In Article 6 (conclusion of framework agreements), in paragraph 1, at point (j), for “Article 47 of Directive 2012/34/EU” substitute “regulation 26(5) and (6) of the 2016 GB Regulations or, as the case may be, regulation 26(5) and (6) of the 2016 NI Regulations.”.

66. In Article 8 (ceilings for the allocation of framework capacity), omit paragraph 3.

67. In Article 9 (coordination in case of conflicting requests for framework agreements for any time after the end of the next timetable period)—

(a) in paragraph 1, for “Article 46(3) and (4) of Directive 2012/34/EU” substitute “regulations 13(4)(h)(v) and 23(4), (5) and (6) of the 2016 GB Regulations or, as the case may be, regulations 13(4)(j)(iv) and 23(4), (5) and (6) of the 2016 NI Regulations”;

(b) in paragraph 7, for “Article 47 of Directive 2012/34/EU” substitute “regulation 26 of the 2016 GB Regulations or, as the case may be, regulation 26 of the 2016 NI Regulations”.

68. In Article 10 (coordination of conflicting requests for train paths under framework agreements during scheduling procedure)—

(a) in paragraph 1—

(i) for “Article 45 of Directive 2012/34/EU” substitute “regulation 23(4) to (10), (9) and (10) of the 2016 GB Regulations or, as the case may be, regulation 23(1) to (3), (9) and (10) of the 2016 NI Regulations”;

- (ii) for “Article 46 of Directive 2012/34/EU” substitute “regulation 23(4) to (10) of the 2016 GB Regulations or, as the case may be, regulation 23(4) to (10) of the 2016 NI Regulations”;
  - (b) in paragraph 2, at point (c)—
    - (i) for “as referred to in Article 39 of Directive 2012/34/EU” substitute “set out in regulation 19(1), (3) and (16)(a) and (c) of the 2016 GB Regulations or, as the case may be, regulation 19(1), (2) and (12)(a) and (c) of the 2016 NI Regulations”;
    - (ii) for “Articles 47 and 49 of Directive 2012/34/EU” substitute “regulations 25 and 26 of the 2016 GB Regulations or, as the case may be, regulations 25 and 26 of the 2016 NI Regulations”;
  - (c) in paragraph 2, in the final sentence—
    - (i) for “Member States” substitute “The Office of Rail and Road or, in the case of a rail link facility (as defined in the 2016 GB Regulations), the Secretary of State”;
    - (ii) for “Article 39 of Directive 2012/34/EU” substitute “regulation 19(1) of the 2016 GB Regulations or, as the case may be, regulation 19(1) of the 2016 NI Regulations.”;
  - (d) in paragraph 5—
    - (i) for “as referred to in Article 39 of Directive 2012/34/EU”, each time it occurs, substitute “set out in regulation 19(1) and (3) of the 2016 GB Regulations or, as the case may be, regulation 19(1) and (2) of the 2016 NI Regulations”;
    - (ii) for “Articles 47 and 49 of Directive 2012/34/EU”, each time it occurs, substitute “regulations 25 and 26 of the 2016 GB Regulations or, as the case may be, regulations 25 and 26 of the 2016 NI Regulations”.
- 69.** In Article 11 (adjustment of framework capacity in the framework agreement)—
- (a) in paragraph 2, for “Article 44(3) of Directive 2012/34/EU” substitute “regulation 21(2) of the 2016 GB Regulations or, as the case may be, regulation 21(2) of the 2016 NI Regulations”;
  - (b) in paragraph 3, in the fourth subparagraph, for “referred to in Article 48(1) of Directive 2012/34/EU” substitute “set out in regulation 24 of the 2016 GB Regulations or, as the case may be, regulation 24 of the 2016 NI Regulations”.
- 70.** In Article 12—
- (a) in paragraph 1 omit the words “of the rail system within the Union”;
  - (b) in paragraph 3, for “Article 40 of Directive 2012/34/EU” substitute “regulation 20 of the 2016 GB regulations or, as the case may be, regulation 20 of the 2016 NI Regulations”.
- 71.** In Article 13 (penalties), in paragraph 1, for “Article 42(4) of Directive 2012/34/EU” substitute “regulation 21(6) of the 2016 GB Regulations or, as the case may be, regulation 21(6) of the 2016 NI Regulations”.
- 72.** Omit Articles 14 and 15.
- 73.** After Article 16, omit the words from “This Regulation” to “Member States.”.

**Commission Implementing Regulation (EU) 2018/1795 of 20 November 2018 laying down procedure and criteria for the application of the economic equilibrium test pursuant to Article 11 of Directive 2012/34/EU of the European Parliament and of the Council**

**74.** Commission Implementing Regulation (EU) 2018/1795 of 20 November 2018 laying down procedure and criteria for the application of the economic equilibrium test pursuant to Article 11 of Directive 2012/34/EU of the European Parliament and of the Council is amended as set out in regulations 75 to 87.

**75.** Save where these Regulations provide otherwise, for “regulatory body”, in each instance where it occurs, substitute “Office of Rail and Road”.

**76.** Omit Article 2 (scope).

**77.** In Article 3 (definitions)—

(a) in the definition of “economic equilibrium test”—

(i) for “Article 11(1) to (4) and Article 11a of Directive 2012/34/EU” substitute “regulations 5(6) and 33 of the 2016 GB Regulations or, as the case may be, regulations 4(7) and 33 of the 2016 NI Regulations,”;

(ii) for “a regulatory body” substitute “the Office of Rail and Road”;

(iii) for “Article 11(2) of Directive 2012/34/EU” substitute “regulation 33(4) of the 2016 GB Regulations or, as the case may be, regulation 33(4) of the 2016 NI Regulations”.

(b) after the definition of ‘exclusive right’ insert—

“(7) ‘2016 GB Regulations’ means the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016.

(8) ‘2016 NI Regulations’ means the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016.”.

**78.** In Article 4 (notification of a planned new rail passenger service)—

(a) in paragraph 1, for “regulatory bodies concerned” substitute “Office of Road and Rail” and for “the deadline set in Article 38(4) of Directive 2012/34/EU” substitute “regulation 19(7) of the 2016 GB Regulations or, as the case may be, regulation 19(14) of the 2016 NI Regulations”;

(b) in the opening words of paragraph (2), for “Regulatory Bodies” substitute “The Office of Rail and Road” and for “their” substitute “its”;

(c) in paragraph 4, at point (a), omit “within the meaning of Directive 2012/34/EU”;

(d) in paragraph 4, at point (b), for the words “with the right to” to the end, substitute “referred to in regulation 19(8)(c) of the 2016 GB Regulations or, as the case may be, regulation 19(15)(c) of the 2016 NI Regulations”;

(e) in paragraph 5 for “regulatory bodies and” substitute “Office of Road and Rail and the”.

**79.** In Article 5 (deadline for requesting the economic equilibrium test)—

(a) for paragraph 1, substitute—

“1. Any request for an economic equilibrium test shall be made to the Office of Rail and Road by the entities referred to in regulation 33(4) of the 2016 GB Regulations or, as the case may be, regulation 33(4) of the 2016 NI Regulations within one month of receipt from the Office of Rail and Road of the information on the intended passenger service referred to in regulation 19(8) of the 2016 GB Regulations or, as the case may be, regulation 19(15) of the 2016 NI Regulations.”;

(b) in paragraph 2, for “Article 11(2) of Directive 2012/34/EU” substitute “regulation 33(4) of the 2016 GB Regulations or, as the case may be, regulation 33(4) of the 2016 NI Regulations”;

(c) in paragraph 3, for “Section 3 of Chapter IV of Directive 2012/34/EU” substitute “Part 5 of the 2016 GB Regulations or, as the case may be, Part 5 of the 2016 NI Regulations”.

**80.** In Article 7 (information requirements for the economic equilibrium test), in paragraph 2, in the last sentence, for “Section 3 of Chapter IV of Directive 2012/34/EU” substitute “Part 5 of the 2016 GB Regulations or, as the case may be, Part 5 of the 2016 NI Regulations”.

**81.** In Article 8 (confidentiality), in paragraph 4, omit “according to Article 56(10) of Directive 2012/34/EU” and “national”.

**82.** In Article 9 (procedure for the economic equilibrium test)—

- (a) in paragraphs 2, 4 and 5, for “point 3 of Annex VII to Directive 2012/34/EU”, substitute “paragraph 3 of Schedule 4 to the 2016 GB Regulations or, as the case may be, paragraph 3 of Schedule 3 to the 2016 NI Regulations,”;
- (b) in paragraph 6, for “point 3 of Annex VII to Directive 2012/34/EU”, substitute, “paragraph 3 of Schedule 4 to the 2016 GB Regulations or, as the case may be, paragraph 3 of Schedule 3 to the 2016 NI Regulations”.

**83.** In Article 10 (contents of the economic equilibrium test and assessment criteria), paragraph 7, for “the second subparagraph of Article 56(12) of Directive 2012/34/EU” substitute “regulation 35(4) of the 2016 GB Regulations or, as the case may be, regulation 35(4) of the 2016 NI Regulations”.

**84.** In Article 11 (result of economic equilibrium test)—

- (a) in paragraph 1, for “Article 11(2) of Directive 2012/34/EU” substitute “regulation 5(6) and regulation 33 of the 2016 GB Regulations or, as the case may be, regulation 4(7) and regulation 33 of the 2016 NI Regulations”;
- (b) in paragraph 2, at point (a), for “Article 10(2) of Directive 2012/34/EU” substitute “regulation 5(1) to (4) of the 2016 GB Regulations or, as the case may be, regulation 4(1) to (5) of the 2016 NI Regulations”;
- (c) in paragraph 3—
  - (i) for “new service as defined by Article 3(36) of Directive 2012/34/EU” substitute “new high speed passenger service, being a passenger rail service operated without intermediate stops between two places separated by a distance of at least 200km on specially-built high-speed lines equipped for speeds generally equal to or greater than 250km/h and running on average at those speeds”;
  - (ii) for “Article 11(a) of Directive 2012/34/EU” substitute regulation 5(6) and regulation 33 of the 2016 GB Regulations or, as the case may be, regulation 4(7) and regulation 33 of the 2016 NI Regulations”;
- (d) in paragraph 5, for “listed in Article 11(3) of Directive 2012/34/EU” substitute “referred to in regulation 33(6)(d) of the 2016 GB Regulations or, as the case may be, regulation 33(6)(d) of the 2016 NI Regulations, ”.

**85.** For Article 12 (cooperation between regulatory bodies competent for a proposed new international service) substitute—

“1. The Office of Rail and Road may, subject to receiving appropriate undertakings as regards confidentiality, provide other regulatory bodies with information in relation to an economic equilibrium test it is carrying out or has carried out in relation to a new international passenger service and in reaching its decision in relation to an economic equilibrium test may take account of information received from any other regulatory bodies.

2. In this Article “other regulatory bodies” means regulatory bodies established in member States in accordance with article 55 of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area that have competence for any part of the route of the proposed international passenger service referred to in paragraph 1.”

**86.** In Article 14 (methodology), omit paragraph 2.

**87.** After Article 16, omit the words from “This Regulation” to “Member States.”.

## PART 5

### Application of retained EU law in Great Britain to new rail passenger services

**88.** Immediately after the transitory modifications contained in Schedule 6 to the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 cease to have effect, Commission Implementing Regulation (EU) 2018/1795 of 20 November 2018 laying down procedure and criteria for the application of the economic equilibrium test pursuant to Article 11 of Directive 2012/34/EU of the European Parliament and of the Council applies to new rail passenger services which are international passenger services.

Signed by authority of the Secretary of State

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Transport

## SCHEDULE

Regulation 23

### “SCHEDULE 4A

Regulation 15

#### Basic Principles and Parameters of Contractual Agreements between Competent Authorities and Infrastructure Managers

**1.** The contractual agreement referred to in regulation 15(6) must specify provisions of regulation 15(6) to (13) and include at least the following elements—

- (a) the scope of the agreement as regards infrastructure and service facilities, structured in accordance with Schedule 2 (services to be supplied to railways undertakings). It shall cover all aspects of infrastructure management, including maintenance and renewal of the infrastructure already in operation. Where appropriate, construction of new infrastructure may also be covered;
- (b) the structure of payments or funds allocated to the infrastructure services listed in Schedule 2, to maintenance and renewal and to dealing with existing maintenance and renewal backlogs. Where appropriate, the structure of payments or funds allocated to new infrastructure may be covered;
- (c) user-oriented performance targets, in the form of indicators and quality criteria covering elements such as:
  - (i) train performance, such as in terms of line speed and reliability, and customer satisfaction,
  - (ii) network capacity,
  - (iii) asset management,
  - (iv) activity volumes,
  - (v) safety levels, and
  - (vi) environmental protection;
- (d) the amount of possible maintenance backlog and the assets which will be phased out of use and therefore trigger different financial flows;
- (e) the incentives referred to in regulation 15(7), with the exception of those incentives implemented through regulatory measures in accordance with regulation 15(8)(b);
- (f) minimum reporting obligations for the infrastructure manager in terms of content and frequency of reporting, including information to be published annually;

- (g) the agreed duration of the agreement, which must be synchronised and consistent with the duration of the infrastructure manager's business plan, concession or licence, where appropriate, and the charging framework and rules set by the State;
- (h) rules for dealing with major disruptions of operations and emergency situations, including contingency plans and early termination of the contractual agreement, and timely information to users;
- (i) remedial measures to be taken if either of the parties is in breach of its contractual obligations, or in exceptional circumstances affecting the availability of public funding; this includes conditions and procedures for renegotiation and early termination."

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Regulations 9(a), 13(b) and (c) and 21(b) are made in exercise of the powers in section 2(2) of the European Communities Act 1972 (c. 68) in order to take advantage of derogations from provisions of directly applicable EU tertiary legislation which apply at the option of individual Member States.

Regulation 9(a) and 13(b) and (c) implement the derogations set out in paragraph 3 of Article 8 and Articles 14 and 15 of Commission Implementing Regulation (EU) 2016/545 of 7 April 2016 on procedures and criteria concerning framework agreements for the allocation of rail infrastructure capacity.

Regulation 21(b) implements the derogations set out in paragraph 2 of Article 3 and paragraph 2 of Article 5 of Commission Implementing Regulation (EU) 2015/909 of 12 June 2015 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service.

The remainder of these Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs 8(2) (a) to (e) and (g)) arising from the withdrawal of the UK from the European Union.

These Regulations make amendments to legislation in the field of railway infrastructure and, in particular, amend legislation relating to the rules relating to securing access to, and the management of, that infrastructure.

Part 2 amends subordinate legislation for England and Wales and Scotland.

Part 3 revokes retained EU law for the United Kingdom.

Part 4 amends retained EU law for the United Kingdom.

Part 5 modifies the application of Commission Implementing Regulation (EU) 2018/1795 in England and Wales and Scotland after the transitory provisions in Schedule 6 of the Railways (Access, Management and Licensing of Railway Undertakings) 2016 cease to have effect.

The Schedule inserts new Schedule 4A in the Regulations which restates Annex V of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area. This Annex was previously incorporated into the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 by reference.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

An Explanatory Memorandum is published alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).