

EXPLANATORY MEMORANDUM TO
THE RAILWAYS (AMENDMENT) (EU EXIT) REGULATIONS (NORTHERN
IRELAND) 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Infrastructure Northern Ireland (DfI) and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 This instrument amends the following Regulations with the purpose of correcting deficiencies identified that will arise as a result of the United Kingdom leaving the EU, and to ensure that they remain fully legally operable after exit:
- The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016;
 - The Train Driving Licences and Certificates Regulations (Northern Ireland) 2010; and
 - The Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008.
- 2.2 For the purposes of this Explanatory Memorandum, when reference is made to the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016, the Train Driving Licences and Certificates Regulations (Northern Ireland) 2010 and the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008 together, they will be referred to as “the Regulations”.

Explanations

What did any relevant EU law do before exit day?

The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016 (the “NI 2016 Regulations”)

- 2.3 The NI 2016 Regulations revoked and replaced the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 in Northern Ireland and implemented Directive 2012/34/EU establishing a single European railway area (Recast) (“the Directive”). The Directive repealed three key EU measures: (i) Council Directive 91/440/EEC on the development of the Community’s railways; (ii) Council Directive 95/18/EC on the licensing of railway undertakings; and (iii) Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, together with the various Directives amending these, and consolidated these provisions in one place. The Directive also made some substantive changes to the consolidated legal obligations, although most remained unchanged. The NI 2016 Regulations were amended by the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations

(Northern Ireland) 2019, which implemented Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016 amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure.

The Train Driving Licences and Certificates Regulations (Northern Ireland) 2010 (the “NI 2010 Regulations”)

- 2.4 The NI 2010 Regulations implemented, for Northern Ireland, Directive 2007/59/EC of the European Parliament and of the Council on the certification of train drivers operating locomotives and trains on the railway system in the European Union (“the 2007 Directive”). This Directive established a common regime for licensing and certifying train drivers in Member States of the European Union. The aim of this Directive was to harmonise the regulatory regimes of different Member States.
- 2.5 The NI 2010 Regulations have been amended twice. The first amending instrument was the Train Driving Licences and Certificates (Amendment) Regulations (Northern Ireland) 2013, which changed the medical codes included on train driving licences to give effect to certain provisions of Commission Regulation (EU) No 36/2010, and the second amending instrument was the Train Driving Licences and Certificates (Amendment) Regulations (Northern Ireland) 2016, which updated the general professional knowledge and medical and licence requirements for train drivers operating in the EU (implementing amendments to Directive 2007/59/EC introduced by Commission Directive 2014/82/EU).

The Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008 (the “NI 2008 Regulations”)

- 2.6 The NI 2008 Regulations implement the provisions of Council Directive 2005/47/EC on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector. The Regulations apply to workers whose daily shift includes more than one hour on train services going to the Republic of Ireland. These workers are referred to as cross-border workers.

Why is it being changed?

- 2.7 The Regulations are being amended as they contain a number of elements that will be inappropriate after the UK leaves the EU. The amendments to the Regulations will correct deficiencies contained in the domestic Northern Ireland legislative framework, which, if left unchanged, would render the Regulations deficient in certain respects post-exit. Most of the deficiencies that need to be corrected are technical in nature. For example:
- In the NI 2016 Regulations changes are needed to remove certain information exchange provisions that will no longer be relevant or applicable after the UK leaves the EU.
 - In the NI 2010 Regulations the definition of a “train driving licence” needs to be revised so that it refers only to train driving licences issued by the DfI, while new definitions are needed for a licence issued by a European Economic Area (EEA) state (a “European train driving licence”). Changes are also needed to remove certain information exchange provisions in the NI 2010 Regulations that will no longer be relevant or applicable after the UK leaves the EU. The duties to share information have now been replaced with discretionary powers to share such information. A power to share information

is considered desirable, to enable continued mutual cooperation in areas such as the provision of cross-border services.

What will it now do?

- 2.8 The Regulations (as amended by this instrument) will preserve the status quo of the rail legislative framework for rail operations in Northern Ireland, thereby providing certainty. For example:
- Operators that currently hold operator licences will not need to take any action and licences issued in other EEA states and by the Office of Rail and Road in Great Britain (“ORR”) will continue to be recognised in Northern Ireland;
 - The regime for licensing and certifying train drivers who wish to operate on the mainline railway in Northern Ireland will continue unaffected as provision has been made in this instrument for the continued recognition of train driving licences issued by safety authorities in other EEA states.
- 2.9 This approach to recognition of documents reflects the particular importance of cooperation with the Republic of Ireland as regards cross-border railway services.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees.

- 3.1 This instrument is subject to the negative procedure as the proposed amendments are purely technical in nature and are being made to correct deficiencies arising from the UK leaving the EU, and do not have any substantive effect in operational terms. The amendments do not involve any policy changes or introduce new obligations for operators, and do not fulfil the criteria for meeting the requirements for the affirmative procedure.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Northern Ireland.
- 4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument is made in exercise of powers in sections 8 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (EU (Withdrawal) Act)). The EU (Withdrawal) Act makes provision for repealing the European Communities Act 1972 and will preserve EU law, as it stands at the moment of exit, in UK law. It enables the creation of a new body of domestic legislation by bringing the texts of

directly applicable EU legislation into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the UK's obligations as a member of the EU. The EU (Withdrawal) Act also contains temporary power to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in retained EU law, to ensure that the UK's legal system continues to function properly outside the EU. The EU (Withdrawal) Act does not preserve EU directives. Changes made under section 8 of the EU (Withdrawal) Act are therefore made to the Regulations, which implement EU directives mentioned in paragraphs 2.3, 2.4, 2.5 and 2.6 in Northern Ireland.

- 6.2 Paragraph 21 of Schedule 7 is used to make various other minor consequential and incidental changes to the Regulations and to provide for a saving for the recognition of European operator licences and European train driving licences on an indefinite basis.

7. Policy background

What is being done and why?

- 7.1 This instrument is intended to make the required changes to the legislation covering important elements of the rail legislative regime in Northern Ireland to ensure it continues to function correctly in the event of a 'no deal'. This instrument applies to rail transport, which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to maintaining devolution in Northern Ireland. The Northern Ireland Civil Service has therefore prepared this instrument and explanatory memorandum. It has been agreed that, absent a functioning Northern Ireland Executive, the UK Government will make the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments in order to ensure a functioning statute book across the UK, including in Northern Ireland, for exit day.
- 7.2 The Regulations contain a number of deficiencies that arise as a consequence of the UK's departure from the EU, and which therefore need to be corrected to ensure legal certainty in what is an important part of the railways legal regime in Northern Ireland.
- 7.3 Other than correcting these deficiencies, the changes made by this instrument to the Regulations will maintain the regulatory status quo for the requirements and procedures for the licensing of operators and the licensing and certification of train drivers in Northern Ireland.
- 7.4 The amendments to the specific Regulations are as follows:

Part 2 and the related Schedule – amendment of existing Northern Ireland Regulations

- 7.5 Part 2 and the related Schedule amend definitions and references in the Northern Ireland subordinate railways legislative framework that will become redundant once the UK has left the EU. This, for example, includes specific references to "Member State", and directives that will no longer apply in UK law. It also removes obligations to report to or cooperate with bodies of the EU or Member States.
- 7.6 Part 2 also provides for the continued recognition in Northern Ireland of EEA state issued railway operator licences, enabling those holding one to run services in Northern Ireland. Licences issued in Great Britain by the ORR will also continue to be recognised.

Part 3

- 7.7 This part of the instrument amends, or omits, definitions in the NI 2010 Regulations that contain deficiencies or are wholly deficient. The definition of the European Union Agency for Railways (“the Agency”), to which the UK will no longer belong, will be omitted in alignment with the removal of duties to report to the Agency (the former European Railway Agency was superseded by the European Union Agency for Railways in 2016 by virtue of Regulation (EU) 2016/796). The existing definition of a “train driving licence” is amended to refer only to a DfI issued licence, while new definitions of a ‘European train driving licence’ are included. This will facilitate the continuation of a domestic regime for train driving licensing in Northern Ireland and will enable a distinction to be made, post exit, between licences issued by the DfI, and European train driving licences issued by EEA safety authorities. Under the new provisions, European train driving licences will be recognised indefinitely in Northern Ireland. Licences issued by the ORR in Great Britain will also continue to be recognised.
- 7.8 Part 3 of the instrument also amends the data sharing requirements currently placed on the DfI and railway undertakings in Northern Ireland. The NI 2010 Regulations impose a duty on the DfI to share information on the status of train driving licences issued by it with safety authorities in EEA states. This duty is now replaced with a discretionary power to share such information. This will enable the DfI to share such information with EEA safety authorities to ensure the continued safe operation of cross-border services by drivers operating on such routes. Railway undertakings are now given a discretionary power to share information on train driving certificates for their drivers with safety authorities in EEA states. This replaces a previous duty in the NI 2010 Regulations. The DfI continues to have a duty to share information on the status of train driving licences with employers of train drivers, and railway undertakings continue to have a duty to share information on train driving certificates with the DfI.
- 7.9 The NI 2010 Regulations also impose a duty on the DfI to notify other EEA safety authorities and the Commission if it considers that the holder of a (non-DfI) issued licence does not satisfy the conditions to hold such a licence under the 2007 Directive. The amendments made by this instrument remove the duty to inform the Commission of such matters. The duty to inform EEA safety authorities will be replaced by a discretionary power to provide such information. There will continue to be a duty to inform the ORR of concerns relating to drivers holding ORR issued licences.
- 7.10 This part also corrects a number of technical deficiencies that arise as a result of the UK’s exit from the EU, for example by removing references to “another Member State” and replacing them with references to “member states” and by removing references to functions reserved for the European Commission and the Agency.
- 7.11 Train driving licences issued by the DfI prior to exit day will continue to be valid (notwithstanding changes to the required format such as the removal of the EU flag) after exit day by virtue of paragraph 37 of Schedule 8 to the EU (Withdrawal) Act and therefore no provision is required in relation to this in this instrument.

Part 4

- 7.12 Part 4 of the instrument makes a single change to the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008. These Regulations implement provisions of Council Directive 2005/47/EC on certain aspects of the working

conditions of mobile workers engaged in “interoperable cross-border services” in the railway sector. These provisions in effect apply to workers whose daily shift includes more than one hour on train services going from Northern Ireland to the Republic of Ireland.

- 7.13 The change being made is to the definition of “interoperable cross-border services” and is solely intended to ensure the definition continues to work effectively post exit. There is no change of any kind to the substantive provisions of the regulations or the protections afforded to cross-border workers.
- 7.14 At present the definition of “interoperable cross-border services” is defined as meaning “services to the Republic of Ireland, in respect of which at least two safety certificates are required, as stipulated by Article 10 of Directive 2004/49/EC of the European Parliament and of the Council”.
- 7.15 Directive 2004/49/EC sets out the key EU safety regime in respect of mainline railways in the EU. Among other things it requires railway undertakings (i.e. train operators) to hold a safety certificate. Safety certificates come in two parts, Part A and Part B. Part A certificates relate to compliance with safety requirements generally. Part B certificates which are issued under Article 10 of Directive 2004/49/EC relate to requirements for particular infrastructure. Cross-border services will therefore necessarily hold more than one Part B certificate (operators only ever hold one Part A).
- 7.16 The change made is to remove the reference to Part B certificates so that “interoperable cross-border rail services” are now simply defined as “rail services between Northern Ireland and the Republic”. This will capture the same services as before but will remove any uncertainty as to whether a Part B issued in relation to such services post exit could be said to be “required” for the purposes of Directive 2004/49/EC, as that Directive will no longer have legal effect itself in the UK (although its provisions have been implemented by domestic regulations both for Great Britain and Northern Ireland, respectively the Railways and Other Guided Transport (Safety) Regulations 2006 and the Railways (Safety Management) Regulations (Northern Ireland) 2006).

8. European Union (Withdrawal) Act

- 8.1 This instrument is being made using the power in section 8 of the EU (Withdrawal) Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the European Union. This instrument is also made under paragraph 21 of Schedule 7 to that Act. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 There are no plans to consolidate this legislation.

10. Consultation outcome

- 10.1 As the amendments proposed by this instrument are being made to avoid deficiencies arising from the UK’s withdrawal from the EU, and therefore do not provide for any material change, the DfI considered that there was no requirement for formal consultation on the proposed amendments. However, officials from the DfI attended

stakeholder working groups and roundtable events organised by the Department for Transport as part of their work to consider the technical amendments that would be required to Westminster legislation as a result of the UK leaving the EU. Though these stakeholder events tended to concentrate on Westminster legislation, many of the issues discussed were common to the amendments contained in this instrument. DfI officials played a full role in these stakeholder discussions. No concerns were raised.

- 10.2 As stated earlier, the existing duties for the DfI and railway undertakings to provide information to safety authorities in EEA states on the status of licences and certificates has been replaced by discretionary powers to provide such information. Article 36(4) of the General Data Protection Regulation (Regulation (EU) 2016/679) requires that any proposals for legislative or statutory measures relating to the processing of personal data trigger the requirement of consultation with the Information Commissioner's Office ("ICO"). The Department for Transport has therefore consulted with the ICO regarding the changes being made in relation to the sharing of data in this instrument. The ICO has confirmed that the Department has satisfied the Article 36(4) duty and that it had no further input to provide in relation to the instrument.

11. Guidance

- 11.1 The DfI is not producing any specific guidance on the amendments proposed in this instrument, as the amendments simply address deficiencies arising from the UK's withdrawal from the EU.

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 impact assessment has not been produced for this instrument as the impact will be limited to the extent that the overall costs or benefits to business will be less than £5 million per year. This is because the proposed amendments are minor and technical in nature and will not have any substantive effect on operations as they maintain the status quo and, in practice, will only apply to one operator. Translink, which is publicly owned, is the sole domestic operator in Northern Ireland and jointly operates the cross-border rail service between Northern Ireland and the Republic of Ireland (the Belfast-Dublin Enterprise service). There will therefore be no cost to business and any familiarisation costs to the public operator will be minimal.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is for it to be monitored in the course of normal departmental business.
- 14.2 As this instrument is made under the EU (Withdrawal) Act, no review clause is required.

15. Contact

- 15.1 Garry McKenna telephone: 028 90 540673 or email: garry.mckenna@infrastructure-ni.gov.uk or George Kearns telephone: 028 3885 2675 or email george.kearns@infrastructure-ni.gov.uk at the Department for Infrastructure Northern Ireland can be contacted with any queries regarding the instrument.
- 15.2 Dan Moore, Director, Rail EU Exit at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for Transport, Andrew Jones 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
Appropriate-ness	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	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EU (Withdrawal) Act SIs	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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	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 13, 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 16, 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 when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 The Parliamentary Under Secretary of State for Transport, Andrew Jones MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

1.2 This is the case because:

- the instrument does not contain provisions falling within paragraph 1(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 requiring it to be made under the affirmative procedure;
- the amendments are technical, do not have any substantive effect in operational terms and are only made to correct deficiencies arising from EU exit.

2. Appropriateness statement

2.1 The Parliamentary Under Secretary of State for Transport, Andrew Jones MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 do no more than is appropriate”.

2.2 This is the case because: the proposed amendments are only to correct deficiencies in Northern Ireland’s railways subordinate legislative framework resulting from EU exit.

3. Good reasons

3.1 The Parliamentary Under Secretary of State for Transport, Andrew Jones MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

3.2 These are: that the changes made by this instrument will maintain the regulatory status quo with respect to the requirements and procedures within the Northern Ireland subordinate legislative rail framework post EU exit.

4. Equalities

4.1 The Parliamentary Under Secretary of State for Transport, Andrew Jones MP, has made the following statement:

“The Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 4.2 The Parliamentary Under Secretary of State for Transport, Andrew Jones MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Andrew Jones MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. This Act does not extend to Northern Ireland, and as the Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 extend only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland”.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.