

EXPLANATORY MEMORANDUM TO
THE RAILWAYS (MISCELLANEOUS AMENDMENTS, REVOCATIONS AND
TRANSITIONAL PROVISIONS) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport 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 is required to ensure that the UK continues to have a functioning statute book in force at the end of the transition period. Some, but not all, references to “exit day” will be replaced by “IP completion day”¹ in:
- the Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019;
 - the Connecting Europe Facility (Revocation) (EU Exit) Regulations 2019;
 - the Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019 (“the TDL Regulations”);
 - the Railways (Safety, Access, Management and Interoperability) (Miscellaneous Amendments and Transitional Provision) (EU Exit) Regulations 2019 (“Second Safety Regulations”) and
 - the Cableway Installations (Amendment) (EU Exit) Regulations 2019.
- 2.2 These changes are necessary because these instruments were made prior to exit day, and were due to come into force from that date onwards. As a result of the UK and the EU agreeing the Withdrawal Agreement, the UK has entered the transition period as part of its withdrawal from the EU which is why some references to “exit day” are no longer appropriate and need to be replaced by references to “IP completion day”.
- 2.3 This instrument amends the TDL Regulations and Second Safety Regulations to ensure that all EU train driving licences, Part A safety certificates and single safety certificates (issued pursuant to Directive 2004/49/EC² on the safety on the Community’s railways and Directive (EU) 2016/798³ on railway safety (recast) respectively) are recognised for use in Great Britain up to 31st January 2022. It amends the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019, to ensure that, where appropriate, the legislative framework takes account of EU documentation issued under Directive (EU) 2016/798 and makes further provision to ensure the recognition of Entities in Charge of Maintenance (ECM) certificates issued pursuant

¹ “IP completion day” is the time that the transition period ends.

² OJ No. L 164, 30.4.2004, p. 44–113.

³ OJ No. L 138, 26.5.2016, p. 102–149.

to Commission Regulation (EU) No 445/2011⁴ and Commission Implementing Regulation (EU) 2019/779⁵ which replaces the former during the transition period. These amendments also take account of any certificates issued in respect of cross-border services pursuant to the retained EU law version of that Regulation after IP completion day.

- 2.4 Finally, this instrument revokes Regulation (EU) No 913/2010⁶ concerning a European Rail Network for Competitive Freight and revokes Commission Implementing Regulation (EU) 2019/779 laying down detailed provisions on a system of certification of ECM, except in relation to vehicles operating a cross-border service.

Explanations

What did any relevant EU law do before exit day?

The Cross-border Railway Services (Working Time) Regulations 2008

- 2.5 The Cross-border Railway Services (Working Time) Regulations 2008 (S.I. 2008/1660) implemented Council Directive 2005/47/EC⁷ which provided for stricter requirements on operators of cross-border rail services for the timing and duration of rest periods and breaks, limits on driving time and the need to keep records compared to those specified in the Working Time Directive 93/104/EC⁸ (as implemented by the Working Time Regulations 1998 (S.I. 1998/1833).
- 2.6 These Regulations were prospectively amended by the Cross-Border Railway Services (Working Time) (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/874) in order to ensure that cross-border rail workers in Great Britain continued to have the same rights and protections before and after exit day.

The Railways (Interoperability) Regulations 2011

- 2.7 The Railways (Interoperability) Regulations 2011 (S.I. 2011/3066) implemented for the UK, Directive 2008/57/EC⁹ of the European Parliament and of the Council on the interoperability of the rail system within the EU. This provided a common assessment and authorisation process for rail projects based on conformity with harmonised standards and supplemented by national rules. Its over-arching objective was to create a harmonised European railway system that allowed for the safe and uninterrupted movement of trains and to promote the single market in the rail sector. It has led to the harmonisation of the rail technical standards framework of Member States. This includes the technical standards for building and operating equipment and the process by which vehicles, infrastructure, and equipment designs are verified against these standards and authorised to be placed into service by national safety authorities in each Member State.
- 2.8 These regulations were prospectively amended by the Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/345), the Second Safety Regulations and the Railways (Interoperability) (Miscellaneous Amendments and

⁴ OJ L 122, 11.5.2011, p. 22–46.

⁵ OJ L 1391, 27.5.2019, p. 360–389.

⁶ OJ L 276, 20.10.2010, p. 22–32.

⁷ OJ L 195, 27.7.2005, p. 15–17.

⁸ OJ L 307, 13.12.1993, p. 18–24.

⁹ OJ L 191, 18.7.2008, p. 1–45.

Revocations) (EU Exit) Regulations 2020 (S.I. 2020/318) to ensure the continuation of an effective standards regime for the authorisation of railway rolling stock and infrastructure in the UK, while making adjustments for the UK's withdrawal from the EU. The intention was to ensure that the current regulatory framework remains operable in UK law¹⁰ and to provide for a clear framework to authorise new, upgraded or renewed rolling stock and infrastructure so that it can be used on the UK rail system. It was also necessary to facilitate unilateral recognition of systems and components that have been previously assessed against EU standards where no additional UK-specific assessments are required.

Regulation (EU) No 1316/2013 establishing the Connecting Europe Facility

- 2.9 Regulation 1316/2013¹¹ on the Connecting Europe Facility (“the CEF Regulation”) is the funding instrument for the Trans-European Networks for Transport (“TEN-T”), Energy (“TEN-E”) and Digital Communications (“e-TEN”). It sets the conditions, methods and internal EU procedures for providing EU financial assistance to the trans-European networks and establishes the amounts of funding available for the 2014-2020 multi-annual financial framework.
- 2.10 The Connecting Europe Facility (Revocation) (EU Exit) Regulations 2019 prospectively revoked Regulation (EU) No 1316/2013¹² and Commission Delegated Regulation (EU) 2016/1649¹³ and provides powers for the Department for Transport, the Department for Business, Energy and Industrial Strategy and the Department for Digital, Culture, Media and Sport to make payments in respect of CEF grants if these are not met by the EU in the event of the UK leaving the EU without a withdrawal agreement in place. In addition, powers were also provided to make payments between exit day and the end of the 2020 CEF funding period so that any Secretary of State may provide funding to a beneficiary who has been awarded CEF funding (whether or not the funding has yet commenced), in relation to transport, energy and telecommunications infrastructure projects.

The Train Driving Licences and Certificates Regulations 2010

- 2.11 The Train Driving Licences and Certificates Regulations 2010 implemented, for Great Britain, Directive 2007/59/EC¹⁴ 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. 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, enabling train drivers to move more freely between Member States and employers.
- 2.12 These regulations were prospectively amended by the TDL Regulations (S.I. 2019/677) and by the Railways (Interoperability) (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2020 (S.I. 2020/318) largely to preserve the status quo, including the regime for licensing and certifying train drivers who wish to operate on the mainline railway in Great Britain, while making adjustments for the UK's withdrawal from the EU. The amendments also include provisions for the

¹⁰ In relation to interoperability, all regulations are UK wide

¹¹ OJ L 348, 20.12.2013, p. 129-171.

¹² OJ L 348, 20.12.2013, p. 129-171.

¹³ OJ L 247, 15.9.2016, p. 1-4.

¹⁴ OJ L 315, 3.12.2007, p. 51-78.

continued recognition in Great Britain of European train driving licences issued prior to exit day, for up to two years from exit day.

The Railways and Other Guided Transport Systems (Safety) Regulations 2006

- 2.13 The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (“ROGS”) (S.I. 2006/599) implemented Directive 2004/49/EC (“the Railway Safety Directive”), which introduced a set of requirements on EU Member States with the aim of creating a common regulatory framework for railway safety across the EU. The Railway Safety Directive has led to a harmonisation of the regulatory framework of Member States, including the rules governing safety, the process of certifying railway undertakings, the tasks and roles of national safety authorities and the procedures for the investigation of accidents. The Railway Safety Directive will be repealed on 31 October 2020 by Directive 2016/798/EU (“the Recast Safety Directive”), as amended by Directive 2020/700/EU¹⁵, which will replace the old system of Part A and Part B safety certificates with single safety certificates, among other changes.
- 2.14 ROGS also implemented requirements arising pursuant to Commission Regulation (EU) 445/2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007¹⁶ (“the 2011 ECM Regulation”) in relation to a system of certification of entities in charge of maintenance (“ECM”) for freight wagons. ROGS introduced a requirement that no person may place in service or use a freight wagon on the mainline railway unless that vehicle has an ECM assigned to it, and that ECM is registered as such in the national vehicle register. This system requires that each ECM ensure that, through a system of maintenance, a vehicle for which is it responsible is safe to run on the mainline railway. Under the Regulation, an ECM responsible for freight wagons must also obtain an ECM certificate from a certification body, demonstrating compliance with the maintenance systems requirements of the Regulation.
- 2.15 The 2011 ECM Regulation is being replaced by Commission Implementing Regulation (EU) 2019/779 laying down detailed provisions on a system of certification of entities in charge of maintenance of vehicles pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and revoking Commission Regulation (EU) No 445/2011 (“the new ECM Regulation”) during the transition period. The new ECM Regulation extends the requirement for ECM certification to certain types of passenger vehicles, while introducing a new system for the management of components deemed to be safety critical, among other areas.
- 2.16 ROGS was prospectively amended by the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/837) and the Second Safety Regulations (S.I. 2019/1310). The amendments largely preserve the status quo, including the requirements and procedures for obtaining safety certificates, authorisations and certificates for freight ECM for use in Great Britain as well as unchanged requirements for rail operators to establish and maintain common safety management systems in line with common safety targets, while making adjustments for the UK’s withdrawal from the EU. The amendments also provide for a two-year limit for the recognition of EU Part A safety certificates in Great Britain, which will apply to EU

¹⁵ OJ L 165, 27.5.2020, p. 27–30

¹⁶ OJ L 153, 14.6.2007, p. 9–24.

Part A safety certificates issued before exit day. EU Part A safety certificates issued by an EU member state after exit day would no longer be recognised in Great Britain.

The Cableway Installations Regulations 2018

2.17 The directly applicable EU Regulation 2016/424 (the “Cableways EU Regulation”) revoked and replaced, with some limited changes, an earlier EU Directive, Council Directive 2000/9/EC on cableway installations designed to carry persons. The Cableways EU Regulation, and the Directive which it revoked were adopted as part of the EU’s programme to eliminate technical barriers to trade; the primary purpose of this approach was to harmonise national laws regarding the design and manufacture of cableways equipment to be used in installations designed to carry passengers. The Cableways EU Regulation regulates the introduction and sale on the market of subsystems and safety components; it also requires EU Member States to set rules on the design, construction and entry into service of new cableway installations. The Cableway Installations Regulations 2018 (S.I. 2018/816) made provision for these matters and other points of detail, as well as providing for enforcement (by the Health and Safety Executive in Great Britain and the Health and Safety Executive for Northern Ireland in Northern Ireland).

2.18 These regulations were prospectively amended by the Cableway Installations (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1347), which also amend the directly applicable Cableways EU Regulation to enable the Secretary of State to designate standards by means of a technical specification for cableways installations, their systems or subsystems, and publish such standards in a manner which is considered appropriate and make adjustments for the UK’s withdrawal from the EU.

Regulation (EU) No 913/2010 concerning a European Rail Network for Competitive Freight

2.19 Regulation (EU) No 913/2010 concerning a European Rail Network for Competitive Freight sets out rules for the establishment and organisation of international rail freight corridors, including the coordination of pre-arranged paths for international rail freight. A rail freight corridor is made up of railway lines, linking two or more terminals along a pre-defined route crossing more than one EU Member State. The UK is a member of the North-Sea Mediterranean Corridor as defined by these Regulations.

Why is it being changed?

2.20 Over the last two years a number of instruments have been made (as set out in paragraphs 2.6, 2.8, 2.10, 2.12, 2.16 and 2.18) to ensure that the UK legislative rail framework continues to function effectively, following the UK’s withdrawal from the EU. The majority of these instruments were made on the basis of the UK leaving the EU without concluding a withdrawal agreement. Amendments are therefore required to most of these instruments to account for the transition period. During the transition period certain EU legislation has also come into force meaning amendments have to be made to ensure that all the relevant legislation contains the correct references, while redundant EU legislation that will no longer be relevant in the UK is revoked after the end of the transition period. This approach is important to ensure certainty for affected business.

What will it now do?

References to Exit Day

- 2.21 This instrument amends references to the term “exit day” in: the Cross-Border Railway Services (Working Time) (Amendment) (EU Exit) Regulations 2018; the Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019; the Connecting Europe Facility (Revocation) (EU Exit) Regulations 2019; the TDL Regulations; the Second Safety Regulations 2019 and the Cableway Installations (Amendment) (EU Exit) Regulations 2019. These changes replace the term “exit day” in some instances with “IP completion day” and are necessary because these instruments were made prior to 31st January 2020 and were due to come into force on exit day. As a result of the UK and the EU entering into the Withdrawal Agreement, the UK has entered the transition period as part of its withdrawal from the EU which is why some references to “exit day” are no longer appropriate.

Transitional Provisions

- 2.22 This instrument amends the TDL Regulations and the Second Safety Regulations to ensure that all EU issued train driving licences, EU issued Part A safety certificates and single safety certificates (issued pursuant to the Railway Safety Directive or the Recast Safety Directive respectively) issued at any time during the period of two years after exit day, including those issued after the transition period has finished, are recognised for use in Great Britain during that time. These amendments are important as they make Great Britain’s approach to recognition of EU rail documentation consistent with other areas of rail legislation. It will therefore provide consistency and clarity to the industry in terms of the rules that will apply to them during both the transition period and the period up to 31st January 2022.

Recast Safety Directive

- 2.23 This instrument also amends ROGS and the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019, to ensure that, where appropriate, the legislative framework takes account of documentation issued under the new Recast Safety Directive and associated tertiary legislation. It also amends these Regulations to make provision for the recognition of ECM certificates issued pursuant to the new ECM Regulation. This instrument does not transpose the Recast Safety Directive.

Revocation of Directly Applicable EU Legislation

- 2.24 Those parts of directly applicable EU law that are in effect at the end of the transition period will be brought onto the UK statute book by the European Union (Withdrawal) Act 2018 (“EU Withdrawal Act”) as amended by the European Union (Withdrawal Agreement) Act 2020.
- 2.25 This instrument revokes the new ECM Regulation at the end of the transition period in Great Britain, except for its application to cross-border services, where it will continue to be in force. These amendments are necessary to ensure our domestic ECM regime is operable after the transition period, while allowing scope for consistency for the Channel Tunnel as part of ongoing negotiations for cross-border services.
- 2.26 This instrument revokes Regulation (EU) 913/2010 on the European Rail Network for Competitive Freight as these Regulations set out internal EU procedures and requirements which will be redundant at the end of the transition period.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

3.1 This instrument is being laid for sifting by the Sifting Committees.

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 England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this Instrument varies between provisions.

4.3 Part 1 and Regulations 4 and 9 extend to England and Wales and Scotland and Northern Ireland.

4.4 Regulations 2, 3, and 5 to 8 and Part 3 extend to England and Wales and Scotland.

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 section 8 of, and paragraph 21 of Schedule 7 to, the EU Withdrawal Act.

6.2 The EU Withdrawal Act makes provision for repealing the European Communities Act 1972 and will, as amended by the European Union (Withdrawal Agreement) Act 2020, preserve EU law, as it stands at the end of the transition period, 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 powers 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 ROGS, the Cross-Border Railway Services (Working Time) (Amendment) (EU Exit) Regulations 2018, the Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019, the Connecting Europe Facility (Revocation) (EU Exit) Regulations 2019, the TDL Regulations, the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019, the Second Safety Regulations and the Cableway Installations (Amendment) (EU Exit) Regulations 2019 to address failures of retained EU law to operate effectively or to correct deficiencies arising from the withdrawal of the UK from the EU.

7. Policy background

What is being done and why?

- 7.1 The statutory instruments that were made as part of the Department for Transport's EU Exit legislation to correct deficiencies that arose as a consequence of the UK's departure from the EU, and which needed to be corrected to ensure legal certainty in the rail legislative framework, were made on the basis that the UK would leave the EU without a withdrawal agreement in place.
- 7.2 Failing to make corrections to these instruments before the end of the transition period would cause deficiencies in the rail legislative framework and generate uncertainty for industry, for example, whether particular measures are intended to take effect from exit day or from the end of the transition period.

Exit day references

- 7.3 This instrument will make corrections to references to "exit day" in made instruments. Some, but not all, references to "exit day" will be replaced by "IP completion day" in five previously made instruments. These changes are necessary because these instruments were made prior to 31st January 2020 and were due to come into force on exit day. As a result of the UK and the EU entering into the Withdrawal Agreement, the UK has entered the transition period as part of its withdrawal from the EU, which is why some references to "exit day" need to be replaced by references to "IP completion day". By making these corrections this instrument will allow domestic rail legislation to function effectively from the end of the transition period and provide certainty to industry on the legal framework.

Amendments to transitional provisions

- 7.4 In contemplation of the UK leaving the EU without a withdrawal agreement in place, the Department published a rail technical notice on 12 October 2018¹⁷ setting out how the railway industry would be affected by the UK leaving the EU without an agreement in place. As the UK has now left the EU and is in the transition period this notice has been withdrawn and a revised rail technical notice will be issued in due course. This instrument reflects the revised position on the recognition of EU train driving licences and safety certificates during and after the end of the transition period.
- 7.5 The position in relation to the recognition of EU train driving licences in the TDL Regulations was that any EU train driving licence issued prior to exit day would be recognised for a period of two years from exit day or until they expired, whichever was sooner. This would mean that any EU train driving licence issued in the two-year recognition period (which would include the transition period) would not be recognised and therefore the holder of that licence would have to make an application for a UK licence almost immediately after obtaining an EU one to ensure the holder had a valid licence during the period of recognition. The Department for Transport has reviewed this position and the changes made by this instrument allow for EU train driving licences issued at any time for a period of two years from exit day to be recognised in Great Britain for those two years to provide certainty.

¹⁷ <https://www.gov.uk/government/publications/rail-transport-if-theres-no-brexit-deal/rail-transport-if-theres-no-brexit-deal>.

- 7.6 The position in relation to the recognition of EU issued Part A safety certificates in the Railways (Safety, Access, Management and Interoperability) (Miscellaneous Amendments and Transitional Provision) (EU Exit) Regulations 2019 was that EU Part A safety certificates issued before exit day would be recognised in Great Britain for a period of two years from exit day. This would mean EU Part A safety certificates issued by an EU Member State after exit day would not be recognised in Great Britain. The Department for Transport has reviewed this position and will ensure through this instrument that EU issued Part A safety certificates and single safety certificates (issued for a period of two years from exit day, pursuant to the Railway Safety Directive or Recast Safety Directive respectively) are recognised for use in Great Britain for that period.
- 7.7 The amendments set out in paragraphs 7.5 and 7.6 are important as they make Great Britain's approach to recognition of EU rail documentation consistent with other areas of rail legislation, such as operator licences. It will therefore provide consistency and clarity to the industry in terms of the rules that will apply to them during both the transition period and in the period up to 31st January 2022. It is entirely consistent with the policy intention of ensuring recognition of these documents for a period of two years from exit day or until they expired, whichever was sooner. Moreover, it does not prevent the United Kingdom Parliament from diverging from EU rail law following the end of the transition period, where it considers it appropriate to do so.
- 7.8 If these changes are not made to the statute book, we will be in a position where Great Britain is unable to recognise EU issued Part A safety certificates, single safety certificates and train driving licences until 31st January 2022 where they were issued after exit day, but before the end of the transition period. This would not reflect current Government policy of reducing the burden on industry during and after the transition period. For example, it could add additional burdens to Channel Tunnel operators and train drivers, as they would be required to obtain additional licences issued in Great Britain for any of their drivers who obtain an EU issued train driving licence after exit day, in time for the end of the transition period. By making the proposed changes, we will be ensuring that industry has adequate time to obtain the documentation they will need to have in place to operate in Great Britain after 31st January 2022.

Further changes to the safety regime in Great Britain

- 7.9 As the Recast Safety Directive replaces the Railway Safety Directive during the transition period, it is important that technical changes are made to legislation in Great Britain to ensure that we have a clear and comprehensive safety framework in place that takes into account the different types of documentation that could be presented to the UK after the transition period.
- 7.10 Certificates issued to an ECM with responsibility for freight wagons by an appropriate body in an EU Member State in accordance with the 2011 ECM Regulation will continue to be recognised in the UK pursuant to the UK's obligations under the Convention concerning International Carriage by Rail ("COTIF"), which the UK is a signatory of. Specifically, the UK will recognise ECM certificates issued in accordance with Annex A of Appendix G of COTIF¹⁸ providing for certification of entities in charge of maintenance. This Appendix is expected to be made equivalent with the new ECM Regulation and will require signatory states to recognise

¹⁸ http://otif.org/en/?page_id=194.

certificates issued under the new Regulation for vehicles used in international traffic. This instrument therefore makes amendments to ROGS to include appropriate references to the new ECM Regulation where necessary and to ensure continued recognition of ECM certificates in line with COTIF.

- 7.11 This instrument revokes the new ECM Regulation at the end of the transition period in Great Britain, except for its application to cross-border services, where it will continue to apply. These amendments are necessary to ensure Great Britain's domestic ECM regime continues to function effectively after the transition period, while enabling the UK to meet its international obligations in the Channel Tunnel as part of ongoing negotiations with the Government of France in relation to cross-border services.

European Rail Network for Competitive Freight

- 7.12 Regulation (EU) 913/2010 on the European Rail Network for Competitive Freight set out internal EU procedures and requirements which will be redundant at the end of the transition period and are therefore revoked by this instrument. This does not detract in any way from the Government's strong and continued support for the development and growth of UK and international rail freight, reflecting the economic and environmental benefits it provides. By revoking the Regulation, the UK would no longer be part of the North Sea-Mediterranean Rail Freight Corridor.
- 7.13 The use of the Corridor has been negligible in the UK, meaning that it has had no appreciable impact on the development of rail freight in the UK, with freight operators preferring to use access rights granted under national rules, which offer greater certainty. Alongside our broader work to support rail freight, we are working with stakeholders on options for a relationship with the Corridor that support rail freight, whilst respecting the UK's sovereignty.

8. European Union (Withdrawal) Act

- 8.1 This Instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 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 The Department for Transport has not undertaken a formal consultation on the provisions included in this instrument. With regard to the policy regarding the transitional provisions the Department for Transport conducted an informal consultation with stakeholders from the rail sector, from 23 August 2018 to 14 September 2018, where the two-year limited recognition period, amongst other issues, was discussed. A formal consultation was not considered necessary or appropriate in the light of the nature of the changes proposed in this instrument. The Department worked closely with the rail regulator, the Office of Rail and Road, as the licensing

authority. This instrument has extended this two-year recognition period to include single safety certificates issued under the Recast Safety Directive, as these will be deemed equivalent to EU issued Part A safety certificates.

- 10.2 The Department for Transport has been working closely with the Office of Rail and Road, Network Rail and Eurotunnel on the aspect of this instrument that revokes the relevant rail freight corridor legislation.
- 10.3 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 for Transport is not producing any specific guidance on the amendments proposed in this instrument, as the instrument preserves the status quo by addressing 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 prepared for this instrument because the impact will be limited to the extent that the overall costs or benefits to business will be less than £5 million per year.

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 Helen Robinson, Head of Rail EU Transition at the Department for Transport, or Harry Purnell, Policy Advisor for Rail EU Transition at the Department for Transport, can be contacted with any queries regarding the instrument:
Helen Robinson: Telephone: 07977419033, or email: helen.robinson@dft.gov.uk
Harry Purnell: Telephone: 07971145201 or email: harry.purnell@dft.gov.uk
- 15.2 Dan Moore, Director, Rail Strategy and Analysis, 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, Rachel Maclean 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 EUWA 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 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 when using enabling powers under the European Union (Withdrawal) Act 2018

1. Sifting statement(s)

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

“In my view the Railways (Miscellaneous Amendments, Revocations and Transitional Provisions) (EU Exit) Regulations 2020 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 Regulations make the minimum changes to the regulations contained within it, and to the retained EU law to ensure that the UK has a functioning statute book following the end of the transition period. These changes will provide certainty and clarity for industry through ensuring the Department for Transport meets its obligations during the transition period.

2. Appropriateness statement

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

“In my view the Railways (Miscellaneous Amendments, Revocations and Transitional Provisions) (EU Exit) Regulations 2020 do no more than is appropriate.”

- 2.2 This is the case because this instrument makes minor fixes to amendments to previously made instruments to make them operable after the end of the transition period; revokes EU legislation which would also be inoperable after the end of the transition period; makes amendments to widen the recognition period of documentation issued in the EU; and updates the definitions underpinning those documents.

3. Good Reasons

- 3.1 The Parliamentary Under Secretary of State for Transport, Rachel Maclean 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 good reasons ensure the domestic rail legislative framework in Great Britain continues with minimal disruption at the end of the transition period and EU issued train driving licences and safety certificates issued for a period of two years from exit day continue to be recognised in Great Britain for that period of time to ensure a smooth transition. For this to happen, some references to “exit day” must be replaced by “IP completion day”, changes also have to be made to the transitional

provisions for train driving licences and safety certificates and directly applicable EU legislation which would have become retained EU legislation must be repealed.

4. Equalities

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

“This instrument does 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, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to this instrument, I, Rachel Maclean 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.”

4.3 This instrument does not impact upon equality between persons under the 2010 Act. It ensures legal certainty for the domestic rail legislative framework.

5. Explanations

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