

EXPLANATORY MEMORANDUM TO
THE RAILWAYS (REVOCATION AND CONSEQUENTIAL PROVISION)
REGULATIONS 2024

2024 No. 127

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument revokes several pieces of rail-related assimilated law using powers under the Retained EU Law (Revocation and Reform) Act 2023 (“the Act”) and makes amendments to existing legislation consequential on those revocations.
- 2.2 These regulations revoke certain pieces of rail-related assimilated law, as outlined in the explanatory notes¹, which are viewed as being overly prescriptive, add superfluous administrative burdens to industry or are redundant. A detailed explanation of the rational underpinning these revocations is included in the document linked above.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The negative procedure was considered for this instrument because it revokes legislation viewed as being overly prescriptive, add superfluous administrative burdens to industry, or are redundant. Therefore, there will be little to no impact as a result of these revocations.
- 3.2 This instrument was laid for sifting on 20 November. At a meeting on 28 November 2023, and in a report dated 5 December 2023 respectively, the European Statutory Instruments Committee (ESIC) and the Secondary Legislation Scrutiny Committee (SLSC) agreed that this instrument should follow the negative procedure. The Minister has considered the decision of the Sifting Committees and has approved and signed the instrument.
- 3.3 This instrument exercises powers provided for in sections 14(1) and 20(1)(b) of the Act.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England, Wales, and Scotland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, and Scotland.

¹ <https://www.gov.uk/government/publications/the-railways-revocation-and-consequential-provision-regulations-2024-explanatory-notes>

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Act was introduced to Parliament on 22 September 2022 and received Royal Assent on 29 June 2023. The purpose of the Act is to provide the Government with powers to amend, revoke, restate, or replace assimilated law and to remove the special status it has in the United Kingdom (“UK”) legal system, amongst other changes. This instrument takes the opportunity to revoke a variety of assimilated law in accordance with the intention of the Act.

6.2 In relation to rail accident reporting, several EU instruments set requirements on EU member states to have an independent accident investigation body, together with requirements about how those investigations should take place, and in the case of the assimilated law revoked by this instrument, the specific content and format of the investigation reports.

6.3 In relation to railway interoperability there is assimilated law which operates at EU level to establish the operations of the European Union Agency for Railways, which is the EU body which authorises rail operators and oversees rail technical standards within the EU. There is also assimilated law which relates to rail technical standards.

6.4 In the case of rail markets, there is a range of legislation (in the form of Directives and tertiary instruments) which sets out the legal framework for access to rail infrastructure by companies wishing to run passenger or freight rail services. The assimilated law revoked by this instrument sets out detailed requirements on processes and procedures to be followed by the infrastructure manager (“IM”)² when allocating access to their network.

6.5 This instrument is made in exercise of the powers in sections 14(1) and 20(1)(b) of the Act.

6.6 Section 14(1) of the Act provides the power to revoke without replacing any secondary assimilated law; “secondary assimilated law” is defined in section 11(2) of the Act as any retained EU law which is not primary legislation. None of the assimilated law revoked by this instrument is primary legislation.

6.7 Section 20(1)(b) states that a power under the Act to make regulations (such as section 14(1)) includes a power to include “supplementary, incidental, consequential, transitional, transitory or savings provisions” in those regulations. This instrument includes provision which is consequential on the revocation of the legislation set out in this instrument to remove now redundant references to revoked legislation.

² An “infrastructure manager” is any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure.

7. Policy background

What is being done and why?

- 7.1 This instrument revokes certain pieces of rail-related assimilated law, including legislation prescribing the format of rail accident investigation reports, information relating to EU rail technical standards which are no longer relevant following EU exit, and the access requirements that apply to operators seeking to access the rail market, under section 14(1) of the Act and makes consequential amendments to existing legislation under section 20(1)(b) of the Act. This approach is being taken because the pieces of rail-related assimilated law revoked by this instrument are unnecessarily prescriptive or add superfluous administrative burdens to industry. This position has been corroborated by industry stakeholders to whom these requirements apply. Whilst this instrument removes underlying technical detail, redundant or burdensome provisions in order to take advantage of post-EU exit flexibilities, it does not materially change how the railway operates.
- 7.2 This instrument revokes a piece of assimilated law that prescribes drafting requirements for accident investigation bodies to follow when preparing reports of accidents and incidents, which is the duty of the well-established Rail Accident Investigation Branch (“RAIB”) in the UK. The Department and RAIB have assessed the requirements of the regulation and are of the combined view that it is unnecessarily rigid for the preparation of accident investigation reports, and does not add value to the existing regime, which allows RAIB to tailor their reports depending on the nature of the incident or accident they are investigating. Therefore, the Department and RAIB have agreed this piece of assimilated law can be revoked to remove restrictions on RAIB, who will continue to be able to prepare accident investigation reports as before, albeit with greater flexibility. Rail safety will not be detrimentally impacted in any way through this revocation.
- 7.3 Interoperability is an EU initiative to improve rail’s competitiveness with other transport modes through the technical integration of European rail networks and use of standardised rail products. In GB, the rail interoperability regime provides a framework of standards and assurance processes that enables the mainline railway to function as one coherent system as it is progressively modernised.
- 7.4 This instrument revokes six pieces of assimilated law which are peripheral to interoperability, as they are related solely to administrative EU functions and processes which are no longer applicable in GB since the UK left the EU. Owing to the Northern Ireland protocol, these requirements will still be applicable in NI.
- 7.5 In respect of rail markets legislation, this instrument revokes four pieces of assimilated law, which will streamline the statute book. This is because the core legislative requirements are either largely duplicated and captured in other legislation, such as the Railways Act 1993 (c.43) (“RA1993”) or the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (S.I. 2016/645) (“AMRs”), or could be supported, where necessary and on a case-by-case basis, by Office of Rail and Road (ORR) guidance to support operators with how to comply with the legislative framework following revocation. ORR developed updated guidance and has consulted the industry on the proposed updates in advance of revocation. This creates a less prescriptive regime that allows for greater flexibility and sits better in a GB framework, while maintaining the same policy objectives and, critically, providing certainty and continued standards for affected parties.

- 7.6 These regulations remain operable in Northern Ireland and therefore this instrument does not cover equivalent arrangements for rail accident investigation reporting, interoperability, or rail markets in Northern Ireland.

Explanations

What did any law do before the changes to be made by this instrument?

Railway Accident Investigation Reporting

- 7.7 The regime covering the requirements for investigating accidents and incidents on the railways is primarily set out in the Railways (Accident Investigation and Reporting) Regulations 2005 (S.I. 2005/1992) (“RAIR”), which transposed requirements related to accident investigation established by Directive 2004/49/EC³ (“the Railway Safety Directive”). The Directive established the requirement for EU member states to have a national investigation body to carry out independent investigations of serious railway incidents and accidents, without apportioning blame or liability, and to publish reports of the main findings and any recommendations for industry to improve the safety of the railway. In the UK, this function is fulfilled by RAIB, which was established by the Railways and Transport Safety Act 2003 and whose remit was established under RAIR. RAIR is not being changed by this instrument.
- 7.8 Before the UK left the EU on 31 December 2020, the requirements in RAIR were supplemented by Commission Implementing Regulation (EU) 2020/572⁴ of 24 April 2020 on the reporting structure to be followed for railway accident and incident investigation reports, which is being revoked by this instrument.

Interoperability

- 7.9 The Railways (Interoperability) Regulations 2011 (S.I. 2011/3066) (“RIR 2011”) sets out the UK’s interoperability regime. It replaced earlier interoperability legislation - The Railways (Interoperability) Regulations 2006 (S.I. 2006/397) - and transposed Directive (EU) 2008/57⁵ (“the Recast Interoperability Directive”).
- 7.10 The regulations mandate a set of technical standards for the design, build and operation of new, upgraded, or renewed infrastructure, vehicles and components for the mainline railway. These standards include requirements for accessibility, signalling, electrification, station design, track and rolling stock, amongst other subjects. The regulations also set out the procedures for obtaining authorisation from ORR as the safety regulator to place infrastructure or vehicles into service on the mainline rail network, and roles and responsibilities for Government, third party assessment bodies, IMs and rail operators.
- 7.11 RIR 2011 was amended for EU exit to remove interfaces with EU law and institutions and was subject to a Post Implementation Review in 2021. The review indicated that the regulations continue to provide benefit in GB by enabling use of standardised products and international rail supply chains, which can help to reduce the cost of rail projects. It also identified clear areas for reform to reduce regulatory complexity and create a more streamlined framework. These areas for reform are currently being considered by the Department for legislative change at a future date.

³ OJ L 164, 30.4.2004, p. 44–113.

⁴ EUR 2020/572.

⁵ OJ L 191, 18.7.2008, p. 1–45.

Rail Markets Implementing Regulations

- 7.12 The RA1993 and AMRs set out how capacity is allocated, how charges to access the network are calculated and the roles and responsibilities of the IM, rail operator and regulator (in GB, that is ORR). The rail markets implementing regulations are highly technical pieces of assimilated law that add further detail and prescription to the AMRs that are not normally found in UK railway legislation.
- 7.13 The rail markets implementing regulations established a set of harmonised rules governing access to the railways to support greater competition and the creation of a single European railway area. Therefore, these implementing regulations are no longer considered to be necessary in GB and no longer in the interests of the rail sector.

What will it now do?

- 7.14 This instrument revokes eleven pieces of assimilated law as they apply in GB and so that legislation no longer applies in GB. The Department does not anticipate any material impacts for individual groups of people or regional effects.
- 7.15 In respect of Commission Implementing Regulation (EU) 2020/572, this will no longer apply in GB and the RAIB will not be required to follow the reporting structure requirements for accident and incident investigation reports.
- 7.16 In respect of the six interoperability implementing regulations, these regulations are no longer considered requisite in GB, and EU institutions do not have a role in the GB interoperability framework. There will also be no requirement to complete EU administrative processes.
- 7.17 In respect of the four rail markets implementing regulations, there will no longer be a requirement to comply with the technical detail specified, though this does not create a material change in the regulatory framework governing access to GB's network.
- 7.18 Businesses will benefit from greater flexibilities while the core protections offered by the implementing regulations are largely retained through the RA1993 and AMRs. The Department has worked closely with ORR to help provide reassurance to industry that the revocations do not inhibit or change their ability to operate on the railways.

8. European Union Withdrawal, Future Relationship and Assimilated Law Reform

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.
- 8.2 This instrument does however relate to the reform of assimilated law under the powers in sections 14(1) and 20(1)(b) of the Retained EU Law (Revocation and Reform) Act 2023 because this instrument revokes several pieces of rail-related assimilated law.
- 8.3 The Minister of State for Transport, Huw Merriman MP, has made the relevant sifting statement required by that Act in Annex A to this Explanatory Memorandum.

9. Consolidation

- 9.1 There are no plans to consolidate this legislation.

10. **Consultation outcome**

- 10.1 The Department has not undertaken a formal consultation on this instrument because the impact of the proposed revocations is minimal and confined to a number of technical requirements. The material impact is limited as the revocations remove unnecessary prescriptive detail in certain areas to provide greater flexibility in complying with the regimes for rail accident investigation, interoperability, and rail markets access, but do not change core regulatory provisions that remain the same. The Department has, however, engaged extensively with rail industry stakeholders and the bodies that are subject to the existing requirements under the assimilated law to be revoked, to discuss the overall approach being taken and consider the impacts. Stakeholders have not raised material concerns about the removal of this body of assimilated law. Where questions were raised by stakeholders – reflecting the technical nature of this legislation - the Department has engaged with relevant stakeholders to provide reassurance, working closely with ORR. Although formal Devolved Administration consent for this instrument is not required (as policy is reserved to Westminster), the Department has undertaken extensive engagement with the Scottish and Welsh Governments, where no specific objections to the instrument were raised.

Railway Accident Investigation Reporting

- 10.2 The Department has engaged with RAIB, the only body subject to the requirements prescribed by this legislation, to discuss and inform the proposed revocation. RAIB has requested that this legislation is removed from the statute book, as it limits their ability to adapt for each individual incident the type, format and detail covered in accident investigation reports that they produce under existing legislation. RAIR, which sets out some requirements relating to these reports, remains unchanged by this instrument. ORR has also been consulted and does not have objections to this proposal.
- 10.3 The Department also engaged with the wider rail industry to discuss the proposal at a roundtable event held on 19 June 2023, where stakeholders did not raise any objections to the planned revocation.

Interoperability

- 10.4 The Department has consulted with industry on the interoperability assimilated law proposed for revocation through regular monthly meetings with key stakeholders directly affected by these plans i.e. Network Rail, the Rail Safety and Standards Board (“RSSB”), an industry body responsible for managing the maintenance of railway standards in GB, and ORR. The Department also conducted roundtable meetings and surveys on the full list of assimilated law that is revoked by this instrument. In these various engagements, stakeholders have been broadly supportive of the principle of removing these regulations from law. Where minor questions were raised, these were addressed by the Department through engagement with the relevant stakeholder.
- 10.5 The Department’s team responsible for rail safety and interoperability held a workshop on 19 June 2023, which was attended by over 90 stakeholders from across the rail industry. Officials presented the proposed approach to revoking interoperability implementing regulations which was widely accepted by attendees and no concerns were raised.

Rail Markets Implementing Regulations

- 10.6 The Department has conducted extensive engagement with stakeholders across the rail industry on the rail markets implementing regulations proposals. This engagement included the development of a Discussion Document with ORR that was sent out to stakeholders on 24 April 2023. This Discussion Document set out the rationale and analysis for our proposals to support stakeholders to provide informed feedback and, following its issue, the Department also undertook several stakeholder roundtables and bespoke sessions with the rail industry during May-August to understand how the proposal impacts end users. Feedback was received from across industry, including – but not limited to – representatives from freight and rail operating companies, open access operators, IMs, and the DAs.
- 10.7 In respect of the rail markets implementing regulations, ORR issued a consultation⁶ in August 2023 on revised regulatory guidance in anticipation of the proposed revocations. The consultation closed in October with responses received from stakeholders, including IMs, train operators and industry bodies. Industry accepted ORR’s conclusion that the revocations will not result in substantial policy changes. Some suggestions were made on potential further clarifications of the guidance, but no substantive policy issues were raised. ORR has prepared the final iteration of the revised guidance accordingly and will publish it subject to these regulations being revoked.

11. Guidance

- 11.1 The Department for Transport will not be producing public guidance on this instrument.
- 11.2 Please see paragraph 10.7 for detail on ORR’s consultation on ‘Access guidance in preparation for revocation of retained EU law’.

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 There is a small, expected impact on firms, arising from familiarisation costs and reduced administrative burdens to industry.
- 12.4 A full Impact Assessment has not been prepared for this instrument because the direct impacts on business have been assessed at under £5 million per annum. However, a De Minimis Assessment has been undertaken.
- 12.5 This instrument streamlines the statute book in relation to these areas of rail regulation and removes unnecessary levels of prescription, while achieving the same policy outcomes. This instrument also reduces administrative burdens while providing a greater degree of flexibility to industry, ORR and RAIB.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. However, as noted above, the expected impact on firms arising from familiarisation costs and reduced administrative burdens to industry is expected to be limited and will be

⁶ [Access guidance update in preparation for revocation of retained EU law | Office of Rail and Road](#)

mitigated, where relevant, by ORR guidance and engagement by the Department where necessary.

14. Monitoring & review

- 14.1 As regards monitoring of this legislation, the Department intends to undertake proportionate internal reviews in the respective policy areas specified in this instrument to inform any subsequent amendments to the regimes.
- 14.2 As this instrument is made under the Retained EU Law (Revocation and Reform) Act 2023, no review clause is required.

15. Contact

- 15.1 Elena Gillies at the Department for Transport Telephone: 07977022964 or email: elena.gillies@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Peter Lovitt, Deputy Director for Rail Retained EU Law and Access Simplification at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister of State for Transport, Huw Merriman MP, can confirm that this Explanatory Memorandum meets the required standard.

Annex A

Statement required under the Retained EU Law (Revocation and Reform) Act 2023

1. Sifting statement

1.1 The Minister of State for Transport, Huw Merriman MP, has made the following statement regarding use of legislative powers in the Retained EU Law (Revocation and Reform) Act 2023:

“In my view, the Railways (Revocation and Consequential Provision) Regulations 2024 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 this instrument does not materially change existing policy with respect to rail interoperability, rail safety and rail markets legislation. It will, however, remove redundant and burdensome requirements linked to these regimes by revoking certain pieces of rail assimilated law, which have been identified in consultation with the rail industry.