

EXPLANATORY MEMORANDUM TO
THE TRAIN DRIVING LICENCES AND CERTIFICATES (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This Instrument amends the Train Driving Licences and Certificates Regulations 2010, (“the 2010 Regulations”) together with three associated items of directly applicable EU legislation, Commission Decisions 2010/17/EC and 2011/765/EU and Commission Regulation 36/2010/EU (together referred to as “the tertiary legislation”). This tertiary legislation will be converted into domestic law (as “retained EU law”) under the European Union (Withdrawal) Act 2018 (“the EU Withdrawal Act”). The purpose of the amendments being made is to correct a number of deficiencies that will arise with the 2010 Regulations and the tertiary legislation as a result of the UK leaving the EU and to ensure that they remain fully legally operable after exit.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The 2010 Regulations implemented, for Great Britain, 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, enabling train drivers to move more freely between Member States and employers. There is also a body of directly applicable EU tertiary legislation made under the 2007 Directive, which deals with detailed aspects of the train driving licences and certificates regime.
- 2.3 The tertiary legislation that applies to the 2010 Regulations sets out:
- the information to be included in the train driving licences register required to be kept by the Office of Rail and Road (“ORR”) and the Department for Infrastructure in Northern Ireland (“the Department for infrastructure”) and in the train driving certificates register required to be kept by the railway undertakings and infrastructure managers, and how and with whom it can be shared (Commission Decision 2010/17/EC);
 - the format for train driving licences, train driving certificates, certified copies of train driving certificates and application forms for train driving licences (Commission Regulation (EU) 36/2010);
 - the criteria for recognition of training centres and examiners, and for the organisation of examinations (Commission Decision 2011/765/EU).

- 2.4 A train driving licence issued by the national safety authority of any Member State under the 2010 Regulations indicates satisfaction that the driver meets the required medical and general professional standards. It is recognised by all other European Member States.
- 2.5 A train driving certificate is issued by a railway undertaking or infrastructure manager. It shows the infrastructure on which the holder is authorised to drive, and the type of rolling stock that the holder is authorised to drive.
- 2.6 The 2010 Regulations give the ORR, which is the independent regulator for rail safety in Great Britain, (and the national safety authority for the purposes of the 2010 Regulations) a range of duties, including:
- issuing licences;
 - establishing and maintaining the licence register;
 - recognising and registering persons or bodies who carry out driver training and assessment, including medical and psychological assessment; and
 - enforcement.
- 2.7 The 2010 Regulations have been amended twice. The first amending instrument was the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013, which changed the medical codes included on train driving licences to give effect to certain provisions of Commission Regulation (EU) 36/2010. The second amending instrument was the Train Driving Licences and Certificates (Amendment) Regulations 2015 (“the 2015 amendment Regulations”), which updated the general professional knowledge and medical and licence requirements for train drivers operating in the EU (implementing amendments to the 2007 Directive by Commission Directive 2014/82/EU). The 2015 amendment Regulations created a new standard for language tests for drivers communicating safety critical issues, ended the practice of allowing drivers who had lost their binocular vision after starting work to continue to drive trains where suitable adaptations had been put in place, and also set out more detailed requirements for general professional knowledge. Directive 2016/882/EU, which also amended the 2007 Directive, was not considered to require separate implementation as it concerned changes to the language requirements for train drivers which had no relevance in the UK.
- 2.8 The 2007 Directive is implemented in Northern Ireland by the Train Driving Licences and Certificates Regulations (Northern Ireland) 2010 (the “2010 NI Regulations”) with the Department for Infrastructure carrying out the functions assigned in Great Britain to the ORR. This Instrument does not amend the 2010 NI Regulations (amendments to these will be the subject of separate regulations) but it does amend the tertiary legislation relating to Northern Ireland as well as Great Britain.

Why is it being changed?

- 2.9 The 2010 Regulations contain a number of elements that will be inappropriate after the UK leaves the European Union. If left unamended, these deficiencies would render the 2010 Regulations deficient in certain respects post-exit. This is of particular concern given the 2010 Regulations support a safer railway, setting out requirements for train drivers and industry which gives them certainty.
- 2.10 Most of the deficiencies that need to be corrected are technical in nature. For example, the definition of a “train driving licence” needs to be revised so that it refers only to train driving licences issued by the ORR, while new definitions are needed for a

licence issued by the Department for Infrastructure (a “Northern Ireland train driving licence”) and for licences issued by a safety authority in an European Economic Area (EEA) state (a “European train driving licence”).

- 2.11 The 2010 Regulations also need to be changed to establish transitional provisions for the recognition of European train driving licences in Great Britain for a time-limited period of two years after exit to ensure certainty and minimise disruption at the UK-EU border, and for the small number of train drivers using European train driving licences who operate domestic services on the mainline in Great Britain. When the UK leaves the EU, European train driving licences will be no different in content from those used for domestic services in Great Britain. Amending the 2010 Regulations to ensure continued recognition of European train driving licences for this transitional period will avoid risks of disruption to passenger and freight services and avoid uncertainty for drivers operating on the mainline in the UK.
- 2.12 Changes are needed to the 2010 Regulations to ensure that licences issued in Northern Ireland are valid for use in Great Britain indefinitely.
- 2.13 Changes are also needed to remove certain information exchange provisions in the 2010 Regulations that will no longer be relevant or applicable after the UK leaves the EU. Under the 2010 Regulations the ORR, as a safety authority, has a duty to inform other EEA safety authorities if it considers that a condition for holding a licence is not met where a licence has been issued by one of those safety authorities. That duty will no longer be appropriate when the UK leaves the EU but a discretionary power to share such information is being retained for the two year period during which European train driving licences will continue to be recognised. After this two year period this information sharing function will lapse entirely. Changes are also required to remove duties placed on the ORR and UK-established railway undertakings and infrastructure managers to provide information to EEA safety authorities on the status of train driving licences and certificates they have issued. These duties 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.
- 2.14 Changes are also required to the tertiary legislation to correct technical deficiencies. To avoid legal uncertainty and in the interests of transparency, changes are needed to cross-references so that instead of referring to the provisions of the 2007 Directive, the tertiary legislation will now refer to the corresponding provisions of the 2010 Regulations and the 2010 NI Regulations. For the same reasons, references to “competent authorities” need amending to refer to the ORR and the Department for Infrastructure. Changes are also needed to certain requirements in the tertiary legislation, for instance the requirement for licences to display a national symbol within the EU flag, which will not be appropriate after exit. For the same reason, the requirement for the phrase “train driving licence” to be displayed in other EU languages is also being removed.

What will it now do?

- 2.15 In the majority of areas, the amended 2010 Regulations will preserve the status quo, including the regime for licensing and certifying train drivers who wish to operate on the mainline railway in Great Britain. The amended 2010 Regulations will, however, result in some changes in the way the regime operates in Great Britain. For example, the amended 2010 Regulations will remove requirements currently placed on the

ORR to share information with the European Commission, including the requirement to notify the European Commission when a train driving licence issued by the ORR is revoked or suspended.

- 2.16 The amendments to the 2010 Regulations also include provisions for the continued recognition in Great Britain of European train driving licences. The reasons for this are stated in paragraph 2.11. The transitional provisions enable the ORR to continue recognising the validity of European train driving licences for up to two years from exit day.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 The territorial application of this Instrument varies between provisions.
- 3.3 Parts 1 and 3 of the Instrument (the introductory provisions and the provisions amending the tertiary legislation) apply to England and Wales and Scotland and to Northern Ireland. Part 2 (which deals with amendments to the 2010 Regulations) applies in relation to England and Wales and Scotland only.

4. Extent and Territorial Application

- 4.1 The extent of this Instrument is England and Wales and Scotland and Northern Ireland.
- 4.2 Parts 1, and 3 apply to England and Wales and Scotland and to Northern Ireland.
- 4.3 Part 2 applies to England and Wales and Scotland only.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under-Secretary of State for Transport, at the Department for Transport, Andrew Jones, has made the following statement regarding Human Rights:
- “In my view the provisions of the Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights”.

6. Legislative Context

- 6.1 This Instrument is made in exercise of powers in sections 8 and paragraph 21 of Schedule 7 to the 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 2010 Regulations, which implement an EU directive in the UK.

- 6.2 Paragraph 21 of Schedule 7 is used to make various other minor consequential and incidental changes to the 2010 Regulations and the tertiary legislation and to provide for the transitory two-year recognition period for European train driving licences post Exit and to provide for the continued recognition of Northern Ireland train driving licences in Great Britain on an indefinite basis.

7. Policy background

What is being done and why?

- 7.1 The 2010 Regulations together with the tertiary legislation 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 rail safety regime.
- 7.2 Other than correcting these deficiencies, the changes made by this Instrument to the 2010 Regulations will maintain the regulatory status quo for the requirements and procedures for the licensing and certification of train drivers in Great Britain. Separate regulations will be brought forward to amend the 2010 NI Regulations to deal with equivalent deficiencies in those regulations.
- 7.3 The changes in this Instrument to the tertiary legislation will, however, apply to both Great Britain and Northern Ireland.
- 7.4 The amendments to EU law in this Instrument are as follows:

Parts 2: Amendments to the 2010 Regulations

- 7.5 This part of the Instrument amends, or omits, definitions in the 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 an ORR-issued licence, while new definitions of a 'European train driving licence' and a 'Northern Ireland train driving licence' are included. This will facilitate the continuation of a domestic regime for train driving licensing in Great Britain and will enable a distinction to be made, post exit, between licences issued by the ORR and the Department for Infrastructure, and European train driving licences issued by EEA safety authorities before exit day.
- 7.6 Under the new provisions, Northern Ireland train driving licences will be recognised indefinitely in Great Britain, while European train driving licences issued before exit day will continue to be recognised for up to two years after exit day. Once these licences become invalid, any train drivers working in Great Britain who have previously used such a licence will need to apply to the ORR for a train driving licence or have a train driving licence issued by the Department for Infrastructure. This transitional provision is included to minimise the impact on train drivers who may currently hold European train driving licences, and to reduce the risk of disruption to rail services as a result. This policy position was outlined in the Rail Technical Notice, published on 12th October 2018.

- 7.7 Part 2 of the Instrument also amends the data sharing requirements currently placed on the ORR, railway undertakings and infrastructure managers in Great Britain. The 2010 Regulations impose a duty on the ORR 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 ORR 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 and infrastructure managers 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 2010 Regulations. The ORR continues to have a duty to share information on the status of train driving licences with the Department for Infrastructure, employers of train drivers and the train drivers themselves, and railway undertakings and infrastructure managers continue to have a duty to share information on train driving certificates with the ORR and for international train services, additionally, with the Department for Infrastructure (and also the Intergovernmental Commission for the Channel Tunnel).
- 7.8 The 2010 Regulations also impose a duty on the ORR to notify other EEA safety authorities and the Commission if it considers that the holder of a (non-ORR) issued licence does not satisfy the conditions to hold such a licence under the 2007 Directive. The amendments made by the 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 for the two-year period during which European licences continue to be recognised, and then will cease altogether. There will remain a duty to inform the Department for Infrastructure (and also the Intergovernmental Commission for the Channel Tunnel) if there are concerns about a driver operating under a licence issued by the Department for Infrastructure (as these licences will remain valid after the two-year period).
- 7.9 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 'a member state', and by removing references to functions reserved for the European Commission and the Agency.

Part 3: Amendments to retained EU legislation

- 7.10 This part corrects deficiencies in three pieces of EU tertiary legislation that are directly applicable in the UK, and that on exit day will become retained EU law. The amendments made to the tertiary legislation are made for Great Britain and Northern Ireland.

Commission Decision 2010/17/EC on the adoption of basic parameters for registers of train driving licences and complementary certificates provided for under Directive 2007/59/EC of the European Parliament and of the Council

- 7.11 Decision 2010/17 EC contains provisions on the information to be included in registers of train driving licences that are kept by the ORR, and in registers of train driving certificates that are kept by railway undertakings and infrastructure managers, and on how that information can be shared. This Instrument corrects certain technical deficiencies in that Decision by removing a number of references that would be redundant after exit. To avoid legal uncertainty and in the interests of transparency, changes are also made to various cross-references so that instead of referring to relevant provisions of the 2007 Directive, these now refer to the corresponding

provisions of the 2010 Regulations and the 2010 NI Regulations. References to ‘competent authorities’ are also replaced by references to the ORR and Department for Infrastructure.

Commission Regulation (EU) 36/2010 on Community models for train driving licences, complementary certificates, certified copies of complementary certificates and application forms for train driving licences, under Directive 2007/59/EC of the European Parliament and the Council

- 7.12 Commission Regulation 36/2010/EU introduced a community model for train driving licences, covering characteristics such as layout, language, data on the holder, categories of driving and anti-forgery measures. This Instrument makes technical corrections to the deficiencies in this Regulation. For example, references to ‘competent authority’ are replaced with the ORR or the Department for Infrastructure and all references to ‘Community’ have been omitted. Requirements for licences to display a national symbol within the EU flag are also removed as are requirements for the phrase “train driving licence” to be displayed in other EU languages. To avoid legal uncertainty and in the interests of transparency, changes are also made to various cross-references so that instead of referring to relevant provisions of the 2007 Directive, these now refer to the corresponding provisions of the 2010 Regulations and the 2010 NI Regulations.

Commission Decision 2011/765/EU on criteria for the recognition of training centres involved in the training of train drivers, on criteria for the recognition of examiners of train drivers and on criteria for the organisation of examinations in accordance with Directive 2007/59/EC of the European Parliament and of the Council

- 7.13 Commission Decision 2011/765/EU sets out the competence requirements for training centres, examiners and the criteria for organising examinations for train drivers. This Instrument corrects or removes certain deficiencies in this Decision. This includes substituting cross references to the 2010 Regulations and 2010 NI Regulations for existing cross references to the 2007 Directive and substituting references to the ORR and the Department for Infrastructure for references to ‘competent authorities’.
- 7.14 Commission Decision 2011/765 has also been amended by the deletion of two provisions (articles 6 and 10) which allow Member States to specify conditions under which training or examinations for certificates for new infrastructure or rolling stock may be carried out without the examiner or trainer themselves holding the relevant certificate as would normally be required. This provision has not been implemented as it has not been considered necessary. This is because training or examining in these circumstances would be unlikely to take place on the mainline railway where the licensing and certification requirements of the 2010 Regulations apply under regulation 3 (scope) of those regulations and because the lines on which such training or examination would take place would be likely to be closed to normal traffic for the purposes of maintaining, renewing or upgrading railway infrastructure.
- 7.15 Train driving licences issued by the ORR or the Department for Infrastructure 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.

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

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 currently no plans to consolidate the legislation amended by this Instrument.

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 Department considered that there was no requirement for formal consultation on the proposed amendments. However, the Department considered that it would be beneficial to hold an external stakeholder workshop on the 27th July 2018 to outline the Department's proposed approach and to discuss the amendments being made. The stakeholder workshop was attended by railway undertakings (e.g. Eurotunnel, Eurostar), freight operating companies (e.g. Victa Rail Freight), leasing companies (e.g. Porterbrook, ERMEWA SA), certification bodies (e.g. SGS UK Ltd), the Rail Industry Association, the Rail Delivery Group, and the Private Wagon Federation, among other organisations. Attendees to the workshop acknowledged the need for the changes being proposed, which were considered proportionate, and were generally supportive of these changes in preparation for the UK leaving the EU.
- 10.2 In addition to the workshop, the Department for Transport published a Technical Notice on the status of train driving licences in the UK and the EU in the event of a 'no-deal' exit and set out the terms of time-limited recognition for European licences issued prior to or on exit day. This was published on GOV.UK on the 12th October 2018¹. The rail sector, in the main, welcomed the pragmatic approach the Government was taking in respect of recognition of European train driving licences for up to two years or until that train driving licence expires, whichever is the sooner.
- 10.3 As stated earlier, the existing duties for the ORR, infrastructure managers 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 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.

¹ <https://www.gov.uk/government/publications/meeting-rail-safety-and-standards-if-theres-no-brex-it-deal/meeting-rail-safety-and-standards-if-theres-no-brex-it-deal>

11. Guidance

- 11.1 The Department for Transport is not producing any specific guidance on the amendments proposed in this Instrument, as the amendments addresses deficiencies and makes technical fixes arising from the UK's withdrawal from the EU. The ORR plans to update its guidance on train driver licensing in the event of the UK leaving the EU with, or without, a deal.

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.

13. Regulating small business

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

14. Monitoring & review

- 14.1 This legislation will be monitored in the course of normal departmental business.
- 14.2 As this Instrument is made under the EUWA, no review clause is required.

15. Contact

- 15.1 Mark Norton, Head of Railway Safety at the Department for Transport, or Bertie Bricusse, Policy Advisor for Railway Safety at the Department for Transport, can be contacted with any queries regarding the Instrument. Mark Norton: Telephone: 07881 845407 or email: mark.norton@dft.gov.uk. Bertie Bricusse: Telephone: 07970335273 or email: bertie.bricusse@dft.gov.uk.
- 15.2 Dan Moore, Director for Rail EU Exit at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Andrew Jones, Parliamentary Under-Secretary of State for Transport, at the Department for Transport, 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 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 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. Appropriateness statement

- 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 Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 1.2 This is the case because the changes this Instrument makes to the 2010 Regulations, as well as relevant tertiary legislation, are mainly minor or technical in nature and do no more than is strictly necessary to ensure that the 2010 Regulations and relevant tertiary legislation function effectively once the UK has left the EU. The specific changes are set out in “Policy Background” section in paragraphs 7.1 – 7.15.

2. Good reasons

- 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 there are good reasons for the provisions in this Instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are to ensure:

- the legislative framework for the licensing of train drivers in Great Britain continues to operate smoothly following the UK’s exit from the EU without an agreed deal.
- Great Britain has in place the legislative framework for the licensing of train drivers where train driving licences are issued by the ORR, and both train driving licences issued by the ORR and by the Department for Infrastructure in Northern Ireland are recognised in Great Britain to facilitate transfer of train drivers between different employers.
- Great Britain has in place a two-year transitional period where licences issued by EEA states prior to exit continue to be recognised, ensuring certainty for train drivers and minimising any potential disruption.

3. Equalities

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

“The Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 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.”

3.2 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.”

4. Explanations

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

5. Criminal offences

5.1 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 creation of a criminal offence and for the penalty in respect of it in the Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019.”

5.2 These are:

- The Instrument makes minor or technical amendments to the Train Driving Licences and Certificates Regulations 2010 (“the 2010 Regulations”) with the aim of correcting deficiencies and removing any references that would be redundant as a consequence of exiting the EU. It is already an offence under the 2010 Regulations for a person to drive a train, or for an infrastructure manager or railway undertaking to permit a person to drive a train if that person does not have a train driving licence. The penalty for committing an offence is, on summary conviction, imprisonment for a term not exceeding 3 months, or a fine not exceeding the statutory maximum, or both and, on conviction on indictment, imprisonment for a term not exceeding 2 years, or a fine, or both. The correction of deficiencies to reflect the UK’s exit from the EU merely provides for recognition of train driving licences issued by EEA states (a “European train driving licence”) for a period of two years after exit. This has the effect of extending the offence because, after the period of two years has expired, any person holding a European train driving licence (but not holding one issued by the Office of Rail and Road (“ORR”) or the Department for Infrastructure in Northern Ireland) will not be eligible to drive a train in Great Britain without committing an offence.
- I consider that extending the offence will not make it more likely that such an offence will occur in future as the two-year period during which European train driving licences are recognised in Great Britain allows enough time for a train driver working in Great Britain with a European train driving licence to apply for a train driving licence to be issued by the ORR. As the substantive requirements for a train driving licence issued by the ORR remain the same as those for European train driving licences, there is no reason an application should be unsuccessful where it satisfies all the requirements.