

EXPLANATORY MEMORANDUM TO
THE RAIL SAFETY (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019
2019 No. 837

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument amends the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (“the 2006 Regulations”) and the Railways (Access to Training Services) Regulations 2006, to rectify deficiencies that will arise from the United Kingdom’s (UK) exit from the European Union (EU). It amends a number of items of associated safety tertiary legislation as these become retained EU law following the UK’s exit from the EU. Some tertiary legislation is also revoked either because the provisions are now being reproduced within the 2006 Regulations or because the provisions will not be relevant to the UK post exit (e.g. because they relate to future changes to EU law that are not yet fully in force). These changes are being made to ensure that the 2006 Regulations, and retained EU tertiary legislation, continue to operate effectively in the event that the UK leaves the EU without a deal.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The 2006 Regulations 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 The Railway Safety Directive will be repealed in June 2020 by Directive 2016/798/EU, the recast Railway Safety Directive, which has introduced certain changes to the system of safety certification, common safety indicators and common methods of calculating accident costs, among other areas. The recast Railway Safety Directive however is not required to be transposed into the domestic law of EU member states until June 2019 (with scope for this date being extended until June 2020) and it has not therefore been transposed into UK law.
- 2.3 There is also a body of directly applicable EU tertiary legislation sitting under the Railway Safety Directive, which sets out the specifics of the safety regime.
- 2.4 The directly applicable tertiary legislation that supplements the 2006 Regulations includes legislation dealing with:
- The format of Part A and Part B safety certificates and their associated application forms (Commission Regulation (EC) 653/2007);

- Common safety methods for assessing conformity with the requirements for obtaining railway safety certificates and authorisations (Commission Regulation (EU) 1158/2010 and Commission Decision (EU) 1169/2010);
- A common safety method for supervision by national safety authorities after issuing a safety certificate or safety authorisation (Commission Regulation (EU) 1077/2012);
- A common safety method for monitoring by railway undertakings and infrastructure managers after receiving a safety certificate or safety authorisation (Commission Regulation (EU) 1078/2012);
- A common safety method for risk evaluation and assessment (Commission Implementing Regulation (EU) 402/2013);
- Common safety targets for the rail system (Commission Decision 2009/460/EC, Commission Decision 2012/226/EU and Commission Implementing Decision 2013/753/EU); and
- A system of certification for entities in charge of maintenance with responsibility for freight wagons (Commission Regulation (EU) 445/2011).

- 2.5 The 2006 Regulations have been substantially amended twice. The first instrument to make substantial amendments was the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011, which established new mechanisms for maintaining rail vehicles, including a requirement for all vehicles to be registered on a national vehicle register (implementing Directive 2008/110/EC). It also made minor changes to the Common Safety Indicators used by national safety authorities in collecting data on safety incidents, and the methods used to calculate costs during accidents (implementing Commission Directive 2009/149/EC). The second substantial amending instrument was the Railways and Other Guided Transport Systems (Miscellaneous Amendments) Regulations 2013, which alongside certain minor changes introduced new provisions in relation to the process for entities in charge of the maintenance (ECMs) of freight vehicles to be certified and in relation to the process for accrediting and recognising certification bodies. This gave effect to provisions of Commission Regulation (EU) 445/2011 which was made under the Railway Safety Directive (as amended by the 2008 Directive).
- 2.6 The Railway Safety Directive was implemented separately in Northern Ireland by the Railways (Safety Management) Regulations (Northern Ireland) 2006 (the “NI 2006 Regulations”). This instrument does not amend that set of Regulations; separate regulations are being brought forward for that purpose (the Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019).
- 2.7 To help secure the continuation of cross-border services between the UK and relevant EU Member States (France and the Republic of Ireland), the EU has adopted Regulation (EU) 2019/503¹ on certain aspects of railway safety and connectivity with regard to the withdrawal of the United Kingdom from the EU, which will provide a temporary extension to the validity of authorisations, certificates and licences required to run services, including those relating to rail safety. This is a contingency measure applicable for nine months in the event that the UK leaves the EU without a Withdrawal Agreement in place and supplements the extensive efforts already made

¹ Regulation (EU) 2019/503 can be found at the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.LI.2019.085.01.0060.01.ENG&toc=OJ:L:2019:085:FULL>

by Government to secure these important services. This provides context for this Instrument.

Why is it being changed?

- 2.8 The 2006 Regulations and directly applicable tertiary legislation contain a number of elements that will be inappropriate after the UK leaves the European Union and which, if left unchanged, would render the 2006 Regulations and the tertiary legislation deficient in certain respects post exit, leading to uncertainty regarding aspects of the safety regime.
- 2.9 The deficiencies needing to be corrected include significant bodies of text in the tertiary legislation referring to obligations of other member states (in particular safety targets for other member states) that will have no relevance post- EU exit. There are also requirements for reporting to the European Union Agency for Railways (“the Agency”) and the Commission that will no longer be relevant post exit. There is also a need, in relation to the tertiary legislation, to substitute for cross references to the provisions of the Railway Safety Directive cross references to relevant provisions of the 2006 Regulations. Various references to national safety authorities are also changed to references to the Office of Rail and Road.

What will it now do?

- 2.10 Subject to dealing with deficiencies as described above and thereby providing certainty and confidence for industry, the amended 2006 Regulations will preserve the status quo, including the requirements and procedures for obtaining safety certificates, authorisations and certificates for freight ECMs 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. The amended 2006 Regulations will, however, result in some minor changes in the way the regime operates in Great Britain to reflect the UK’s exit from the EU. For example, the amended 2006 Regulations will remove requirements currently placed on the UK to share information with the European Commission or the Agency, for example when a safety certificate issued in the UK is revoked by the Office of Rail and Road (‘ORR’). However, Regulation (EU) 2019/503, described at paragraph 2.7, does impose requirements on the holders of safety certificates and authorisations to share certain information to continue to benefit from the temporary extension of validity. The UK Government fully expects all holders of applicable documentation to do so.
- 2.11 The Government’s technical notice on rail safety and standards, published on 12th October 2018, proposed that this instrument would introduce a provision to impose time-limited recognition on the validity of EU Part A safety certificates issued before exit day. Under these proposals, the 2006 Regulations would recognise EU Part A safety certificates in Great Britain for a maximum of two years after exit, or until expiry, whichever is sooner. This would provide a two-year transitional period to allow EU operators to apply to the ORR for a new certificate to avoid disruption and ensure certainty. It is consistent with the overall approach being taken by the Government in relation to the rail sector including, for instance, to railway operator licensing.
- 2.12 This instrument is the first of two instruments effecting the required changes to the safety regime. A subsequent piece of legislation will provide for the time-limited

recognition set out in the Government's technical notice. In the interim the status quo has been retained.

- 2.13 As a result, safety certificates issued in the EU will remain legally valid in Great Britain after exit, until this is amended by a subsequent instrument, which the Government remains fully committed to bringing forward in due course. This change in timing is expected to have little impact in practice, as there is currently only one operator in Great Britain that operates a service using an EU Part A safety certificate which is due to expire in 2020. All other operators use Part A safety certificates issued by the ORR, which will be unaffected by the proposed second instrument and will remain valid until they expire. While it is possible that another external operator could use its EU Part A safety certificate in Great Britain after this instrument comes into force until a subsequent amendment is made, this is highly unlikely in practice on the basis of experience.
- 2.14 This instrument will provide for the recognition in Great Britain of ECM certificates issued in the EU indefinitely, in accordance with the UK's obligations under the Convention concerning International Carriage by Rail ("COTIF"). This maintains the position established by the 2006 Regulations and is consistent with the position set out in the technical notice of 12th October 2018.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was laid for sifting on 18th February 2019. On 5th March 2019, the European Statutory Instruments Committee of the House of Commons (ESIC) considered the instrument and agreed that the negative procedure should apply. On 6th March 2019, the Secondary Legislation Scrutiny Committee of the House of Lords (SLSC) advised the Department of their recommendation that the affirmative procedure should apply. The reason given for this recommendation was that there are several train operators providing cross-border services between the UK and EU that are using UK-issued safety certificates (Eurostar, GB Rail Freight, DB Cargo and Northern Ireland Railways) and that, because the changes made by this instrument could therefore have an impact on cross-border operations, the House of Lords might wish to debate them.
- 3.2 Following the recommendation of the SLSC the Government has given further careful consideration to the appropriate procedure for progressing this instrument.
- 3.3 This instrument is an important part of the Government's no deal preparations for rail. While most of the corrections in the instrument are minor and technical, the instrument is crucial in providing industry, passengers and the public with the confidence and certainty that, should the UK leave the EU without a deal being in place, the rail safety legislative framework will continue to function effectively. Following the SLSC's recommendation, the Government discussed the possibility of the instrument not being in place by exit day with industry representatives. Industry has been clear that they regard it as important for the legislation to be in place for exit day as this instrument is a key part of their own no deal preparations.
- 3.4 This instrument contains a number of cross-references to the equivalent statutory instrument that has been drafted to address deficiencies contained in the domestic rail safety legislation for Northern Ireland, the Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019. The SLSC similarly

recommended, on 6th March 2019, that that instrument should be subject to the affirmative procedure. As both instruments contain interdependencies, it is important that these instruments are considered together and are made and come into force on the same day. If these instruments do not take effect on the same day, provisions in the Regulations that contain cross-references will become legally ineffective.

- 3.5 In light of the SLSC's recommendation and the need to ensure that the instrument is in place for exit day, the Government has concluded that the instrument should be made using the "made affirmative" procedure provided for in paragraph 5(2) of Schedule 7 to the European Union (Withdrawal) Act 2018. Under this procedure, an instrument which would otherwise be subject to the draft affirmative procedure (for instance as a result of a recommendation of ESIC or the SLSC) can be made without a draft first having been laid before and approved by resolution of each House of Parliament provided the Minister making the instrument is of the opinion that this is necessary for reasons of urgency. In such a case, the instrument still has to be approved by resolution of each House of Parliament within 28 days of its being laid and, if not so approved, will lapse and cease to have legal effect.
- 3.6 The Government recognises that using the made affirmative procedure is unusual but, in this instance, it considers that the instrument needs to be in place as a matter of urgency for when the UK leaves the EU, so as to provide confidence and certainty that the important rail safety legal framework will function effectively. If this instrument were to be laid as draft affirmative at this stage, it is unlikely that there would be sufficient time before exit day for debates to be held in both Houses of Parliament to approve its making; indeed, following the recommendation of the SLSC, there has not been a sufficient time window in order for this Instrument to be made using the normal draft affirmative procedure. Both Houses of Parliament will nevertheless still need to debate and approve this instrument for it to remain in force and the Government welcomes full debate in this area. Given the urgent need for this instrument to be in place by exit day, for the reasons set out above, it is therefore also necessary for the instrument to come into force less than 21 days after it is made, contrary to the usual practice. A statement regarding use of the urgent procedure is given in Part 2 of the Annex to this Explanatory Memorandum.

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)

- 3.7 The territorial application of this instrument includes Great Britain and Northern Ireland. The powers under which this instrument is made cover the entire United Kingdom.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument varies between provisions. Part 1, which is introductory, and Part 3, which revokes certain pieces of retained directly applicable EU tertiary legislation, extend to the whole UK. Part 2 (which makes changes to the 2006 Regulations) and Part 4 (which makes changes to certain pieces of retained directly applicable EU tertiary legislation for Great Britain) extend to Great Britain only. Part 5 extends to Northern Ireland and makes the corresponding changes to retained directly applicable EU tertiary legislation for Northern Ireland to those made in Part 4 for Great Britain. Separate regulations are being brought forward to amend the NI 2006 Regulations.

5. European Convention on Human Rights

- 5.1 Baroness Sugg CBE, Parliamentary Under Secretary of State for Transport, has made the following statement regarding Human Rights:

“In my view the provisions of the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is made in exercise of powers in section 8 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (the “European Union Withdrawal Act”). The European Union 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 that was made to implement the UK’s obligations as a member of the EU. The European Union Withdrawal Act also contains temporary powers to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in domestic law and retained EU law, to ensure that the UK’s legal system continues to function properly outside the EU. The European Union Withdrawal Act does not preserve EU Directives. Amendments made under the powers in the European Union Withdrawal Act are therefore made to the relevant legislation that implements EU Directives in the UK and to the directly applicable tertiary legislation that becomes part of domestic legislation on exit day.
- 6.2 The legislative regime for rail safety is contained primarily in the 2006 Regulations, which transpose the Railway Safety Directive, and in a significant body of EU tertiary legislation which is directly applicable in the UK. The EU safety tertiary legislation consists of EU Commission Regulations, Implementing Regulations and Commission Decisions, that set out the details of common safety methods for monitoring, risk evaluation, issuing safety certificates and authorisations, certifying ECMs, establishing registers for ECMs and setting common safety targets and indicators. This EU tertiary legislation has effect over the entire mainline network in Great Britain and Northern Ireland.

7. Policy background

What is being done and why?

- 7.1 This instrument is intended to allow the status quo in rail safety to continue with the bare minimum of change in the event of a ‘no deal’ EU exit whilst correcting deficiencies of the kind referred to in paragraphs 2.7 – 2.8 above thereby providing continued clarity and certainty, ensuring confidence for industry.
- 7.2 The most important effect of this instrument is to correct technical deficiencies contained in the 2006 Regulations and to provide clarity on how the safety regime will continue to operate in the UK post exit. Changes are therefore made to the definition of a safety authority, which previously referred to a body within a ‘Member State’ so that this now refers to the Office of Rail and Road, as regards Great Britain and the Department for Infrastructure, as regards Northern Ireland. Similarly, the definitions of ‘Part A safety certificate’ and ‘Part B safety certificate’ are amended so that they

have meanings provided to them for their application in Great Britain, and not within a Member State of the EU.

Parts 1 and 2: Introductory and amendments to secondary legislation

- 7.3 Part 1 is introductory. Part 2 amends various provisions in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and the Railways (Access to Training Services Regulations) 2006 that rely on or refer to EU legislation and corrects references to the EU and its member states. It also provides for certain of the EU tertiary legislation revoked in Part 3 (see paragraph 7.4) to be restated as schedules to the 2006 Regulations. This is done in the interests of making the text clearer and more accessible, for instance, where making line by line textual amendments would have led to excessive complexity and difficulty of use for end-users (for example in relation to application forms) or where numerous changes would have been needed to remove references to EU member states (for instance in terms of safety targets for those states).

Parts 3, 4 and 5: Revocation and amendment of retained directly effective EU tertiary legislation

- 7.4 Part 3 revokes retained directly effective EU tertiary legislation relating to safety that is no longer relevant or is restated in the 2006 Regulations (by amendments made in Part 2). The following Commission Regulations and Decisions will be revoked:
- Commission Regulation (EC) 653/2007 on the use of a common European format for safety certificates and application documents in accordance with Article 10 of Directive 2004/49/EC of the European Parliament and of the Council and on the validity of safety certificates delivered under Directive 2001/14/EC (this is now restated in Schedule 8 to the 2006 Regulations);
 - Commission Decision 2009/460/EC on the adoption of a common safety method for assessment of achievement of safety targets, as referred to in Article 6 of Directive 2004/49/EC of the European Parliament and of the Council (this is now restated in Schedule 11 to the 2006 Regulations);
 - Commission Regulation (EU) 445/2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007 (this is now restated in Schedules 9 and 10 to the 2006 Regulations);
 - Commission Decision 2012/226/EU on the second set of common safety targets as regards the rail system (this is now restated in Schedule 11 to the 2006 Regulations);
 - Commission Implementing Decision 2013/753/EU amending Decision 2012/226/EU on the second set of common safety targets for the rail system (this is now restated in Schedule 11 to the 2006 Regulations); and
 - Commission Implementing Regulation (EU) 2018/763 establishing practical arrangements for issuing single safety certificates to railway undertakings pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council, and repealing Commission Regulation (EC) No 653/2007 (this is revoked because it is only relevant to the recast Railway Safety Directive which is not required to be implemented by member States until after the UK has left the EU).

- 7.5 Part 3 also amends Annex XIII of the European Economic Area (EEA) Agreement insofar as is necessary to reflect amendments to EU legislation made elsewhere in the instrument.
- 7.6 Part 4 amends relevant directly applicable retained EU tertiary legislation in respect of Great Britain, correcting deficiencies that will otherwise arise when the UK leaves the EU. Amendments in this Part include replacing references to national safety authorities with references to a safety authority as defined in the 2006 Regulations (in effect the ORR, the Department for Infrastructure for Northern Ireland and the Intergovernmental Commission for the Channel Tunnel) and existing cross references to provisions of the Railway Safety Directive are replaced with cross- references to the corresponding provisions of the 2006 Regulations. The following Commission Regulations are amended by this Part:
- Commission Regulation (EU) 1158/2010 on a common safety method for assessing conformity with the requirements for obtaining railway safety certificates;
 - Commission Regulation (EU) 1169/2010 on a common safety method for assessing conformity with the requirements for obtaining a railway safety authorisation;
 - Commission Regulation (EU) No 1077/2012 on a common safety method for supervision by national safety authorities after issuing a safety certificate or safety authorisation;
 - Commission Regulation (EU) No 1078/2012 on a common safety method for monitoring to be applied by railway undertakings, infrastructure managers after receiving a safety certificate or safety authorisation and by entities in charge of maintenance; and
 - Commission Implementing Regulation (EU) No 402/2013 on the common safety method for risk evaluation and assessment and repealing Regulation (EC) No 352/2009.
- 7.7 Part 5 makes equivalent amendments to EU tertiary legislation in respect of Northern Ireland.

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 EU (Withdrawal) Act to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom 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. Informal consolidated text of instruments is available to the public free of charge via the 'National Archives' website legislation.gov.uk.

10. Consultation outcome

- 10.1 The Department for Transport conducted an informal consultation with stakeholders from the rail sector, from 23rd August 2018 to 14th September 2018, on the changes being made by this instrument. A formal consultation was not considered appropriate, as this instrument is making the minimum number of changes needed to correct the 2006 Regulations and associated retained EU tertiary legislation in the event of a 'no deal' EU Exit.
- 10.2 The informal consultation sought views and opinions, in the form of a questionnaire, on the approach the Department for Transport was taking to preserve the status quo. This requested comments on the Department for Transport's plans for safety management, certification, authorisation and common safety targets.
- 10.3 In addition to the consultation, Department for Transport held a stakeholder workshop at the Office of Rail and Road on the 28th June 2018 to outline the Department's proposed approach and the implications for it in the event of a 'no-deal'.
- 10.4 Over 300 industry bodies were invited to participate in the informal consultation, including railway undertakings, freight operating companies, rail industry associations, accredited bodies and private wagon companies.
- 10.5 In total, eight responses were received. All respondents recognised the need to make the changes proposed in this statutory instrument, which they viewed as pragmatic and proportional for addressing the deficiencies in the legislation in preparation for the UK leaving the EU.

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 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 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 European Union (Withdrawal) Act 2018, 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, Rail EU Exit at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Sugg CBE, Parliamentary Under Secretary of State 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 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
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 Baroness Sugg CBE, Parliamentary Under Secretary of State for Transport, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 do no more than is appropriate.”

- 1.2 This is the case because the changes this instrument makes to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and the Railways (Access to Training Services) Regulations 2006, as well as relevant tertiary legislation, are technical in nature and do no more than is strictly necessary to ensure that those Regulations and that tertiary legislation function effectively once the UK has left the EU. The specific changes are set out in the “Policy Background” section in paragraphs 7.1 to 7.7.

2. Good reasons

- 2.1 Baroness Sugg CBE, Parliamentary Under Secretary of State for Transport, 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 rail safety in the United Kingdom continues to operate smoothly following the United Kingdom’s exit from the EU, should the United Kingdom leave the EU without a deal.
- The United Kingdom continues to have an effective legislative framework capable of maintaining a safe railway network. This includes provisions that ensure the safety of passengers, members of the public and workers on, or near, the railway.
- Technical deficiencies arising from exit in relation to the United Kingdom system for the authorisation, maintenance, supervision and monitoring of infrastructure on the railways are removed.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for Transport, Baroness Sugg CBE, has made the following statement:

“The Rail Safety (Amendment etc.) (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, Baroness Sugg CBE, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

4. Explanations

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

5. Urgency

- 5.1 Baroness Sugg CBE, Parliamentary Under Secretary of State for Transport, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view, by reason of urgency, it is necessary to make the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament.”

- 5.2 This is in order for the Regulations to come into force on exit day. It is crucial for industry, passengers and the public to be provided with certainty and confidence that, should the UK leave the EU without a deal, the rail safety legislative framework will continue to function effectively. As it is highly unlikely that use of the draft affirmative procedure would permit this instrument to come into force on exit day, the use of the made affirmative procedure pursuant to paragraph 5 of Schedule 7 to the European Union (Withdrawal) Act 2018 is necessary for the making of these Regulations.