

EXPLANATORY MEMORANDUM TO

THE RAILWAYS (SAFETY, ACCESS, MANAGEMENT AND INTEROPERABILITY) (MISCELLANEOUS AMENDMENTS AND TRANSITIONAL PROVISION) (EU EXIT) REGULATIONS 2019

2019 No. 1310

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 (JCSI).

2. Purpose of the instrument

- 2.1 The Government is committed to leaving the European Union on 31 October 2019.
- 2.2 The main purpose of this instrument is to introduce a transitional two year period after Brexit during which EU Part A safety certificates issued by EU member states before Brexit will continue to be recognised for the purpose of operating trains on the mainline railway in Great Britain, thereby supporting a smooth and effective transition. The instrument also corrects deficiencies that will arise when the UK leaves the EU in various pieces of domestic legislation, as well as directly applicable EU implementing and delegated legislation. This includes making amendments to previous rail Brexit instruments, so that they correct deficiencies in directly applicable EU implementing and delegated rail legislation that has come into effect since 12 April 2019. This will help ensure that business has certainty and clarity about the affected parts of the rail legislative regime.
- 2.3 Changes will be made by amending several pieces of domestic legislation and directly applicable EU implementing and delegated legislation as follows:
- The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (S.I. 2016/645);
 - The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016 (S.R 2016 No. 420);
 - The Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/837) (this instrument amended the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (S.I. 2006/599) (the “2006 Regulations”). The present instrument modifies and supplements those earlier amendments to the 2006 Regulations)
 - Commission Implementing Regulation (EU) No 869/20141 on new rail passenger services;
 - Commission Implementing Regulation (EU) 2017/2177 on access to service facilities and rail related services²

¹ OJ No. L 239, 12.8.2014, p. 1–10

- Commission Delegated Regulation (EU) 2018/761 establishing common safety methods for supervision by national safety authorities after the issue of a single safety certificate or a safety authorisation pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 1077/2012³
 - Commission Implementing Regulation (EU) 2018/1795⁴ on the procedure and criteria for the application of the economic equilibrium test.
- 2.4 The instrument also corrects minor drafting errors, including those identified by the JCSI in four previous rail Brexit instruments:
- The Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (S.I. 2019 No. 825);
 - The Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/345);
 - The Rail Safety (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/837); and
 - The Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/518).

Explanations

What did any relevant EU law do before Brexit?

- 2.5 The 2006 Regulations implemented Directive 2004/49/EC⁵ (the “Railway Safety Directive”), which introduced a set of requirements for EU Member States with the aim of creating a common regulatory framework for railway safety across the EU. The Railway Safety Directive harmonised 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/EU⁶ (“the recast Railway Safety Directive”), which will introduce changes to the system of safety certification, common safety indicators and common methods of calculating accident costs in the Railway Safety Directive. The UK notified the Commission on 29 November 2018 that it intended to transpose the recast Railway Safety Directive by the later permitted transposition deadline of June 2020, though this will depend on the nature of Brexit on 31 October 2019.
- 2.6 There is also a large body of directly applicable EU implementing legislation sitting under the Railway Safety Directive which sets out the specifics of the safety regime.
- 2.7 Both the 2006 Regulations and the body of EU implementing legislation were amended by the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019. This instrument addressed a number of deficiencies in the EU implementing legislation referring to obligations of other Member States (in particular safety targets for other

² OJ No. L 307, 23.11.2017, p. 1–13

³ OJ No. L 320, 17.11.2012, p. 3–7

⁴ OJ No. L 294, 21.11.2018, p. 5–14

⁵ OJ No. L 164, 30.4.2004, p. 44–113

⁶ OJ No. L 138, 26.5.2016, p. 102–149

Member States) that will have no relevance post-Brexit. In addition, these Regulations removed requirements to report certain information to the European Union Agency for Railways and the European Commission that will no longer be relevant post Brexit and substituted, for cross-references to the Railway Safety Directive, cross-references to the corresponding provisions of the 2006 Regulations.

Common Safety Method for Supervision

- 2.8 Commission Regulation (EU) 2018/761⁷ establishes a common safety method for supervision by national safety authorities after they have issued single safety certificates (SSCs) and authorisations. This replaced Commission Regulation (EU) 1077/2012⁸ (which was accordingly repealed from 16 June 2019) that set out similar provisions for Part A and Part B safety certificates and authorisations as opposed to SSCs, which are being introduced under the recast Railway Safety Directive.

Access to Rail Service Facilities

- 2.9 Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services, came fully into effect in the UK in June 2019, with one minor part of the Regulation relating to applications for exemptions having come into effect in January 2019. The Implementing Regulation strengthened rail operators' rights to access service facilities and ensured that certain information on the service facility including access, charges and dispute resolution processes is made available to operators. The Regulation also set out that, subject to specified exemptions, service providers must allow railway undertakings access to facilities on a non-discriminatory basis, how access requests should be considered and the circumstances where service providers need to consider whether there is a viable alternative.

Procedure and criteria for the application of the economic equilibrium test

- 2.10 EU legislation has focused on opening up the European rail market and promoting competition in passenger rail markets. There are a number of protections within EU legislation to support this, including an overarching requirement that access to the network is granted in a fair and transparent manner. However, EU legislation also sets out limited circumstances where access to infrastructure can be denied. This includes the circumstance where there is evidence that there would be a substantial negative impact on the economic equilibrium of a public service contract, in the UK usually a franchise or concession agreement, resulting from a new open access service. This limitation in access provides important protection for taxpayers and the Government's considerable and continuing investment in improving our railway. Implementing Regulation (EU) 1795/2018 sets out the processes and procedures that the regulator must carry out when assessing whether an application for access to rail infrastructure by an operator will have a substantial negative impact on a rail franchise and provides for member states or the regulator to be able to charge a fee for carrying out this assessment.

Why is it being changed?

Two year recognition period for EU issued Part A safety certificates

⁷ OJ No. L 129, 25.5.2018, p. 16–25

⁸ OJ No. L 307, 23.11.2017, p. 1–13

- 2.11 As set out in the Government’s Technical Notice⁹, once the UK has left the EU we will have the flexibility to diverge from EU rail law where it is in the UK’s interest to do so, whilst maintaining our excellent safety record. There will be an opportunity for the UK to shape its own railway to meet the needs of our passengers and freight shippers. The Government has committed to work closely with the industry and passengers to identify opportunities and will diverge where it is clearly in the UK’s interests; any divergence will be carefully managed and the impacts fully assessed. As part of the UK’s preparations to leave the EU, and to give industry as much clarity and certainty as possible through supporting a smooth transition, the Government will recognise, as regards Great Britain, EU issued Part A safety certificates issued before Brexit for up to two years after the UK leaves the EU or until they expire, whichever is the sooner. The Government considers that two years is a reasonable and appropriate amount of time in which industry can prepare and align themselves with the GB domestic licensing and certification regime. The assessment process for an application for a Part A safety certificate is approximately four months. This approach is consistent with that taken in relation to train driver licences¹⁰ and operator licences,¹¹ and fulfils the commitments set out by Government, both in the Technical Notice and in the Explanatory Memorandum for the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019¹².
- 2.12 In practice, the two year recognition period will have a minimal impact on the rail industry, as only one operator provides services in Great Britain using a certificate issued in another EU member state. Departmental officials have actively engaged with the operator who has initiated the process of submitting an application to the Office of Rail and Road for a new Part A and a Part B safety certificate.

Access to Rail Service Facilities

- 2.13 As only a minor part of it had come into effect in January, Commission Implementing Regulation (EU) 2017/2177 on access to service facilities and rail-related services was revoked by Part 3 of the Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019. This revocation was due to come into effect when the UK leaves the EU.
- 2.14 Those parts of EU law that are in effect on the day the UK leaves the EU will be brought onto the UK statute book by the European Union (Withdrawal) Act 2018 (“EU Withdrawal Act”). As Commission Implementing Regulation (EU) 2017/2177 will now come fully into effect before the UK leaves the EU, this instrument removes the previous revocation. This instrument also corrects a number of deficiencies in the Implementing Regulation, for example replacing references to Member States, and makes minor amendments to two previous sets of Regulations, the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 and the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016. These latter amendments ensure that the procedures set out in the Implementing Regulation are required to be

⁹ <https://www.gov.uk/guidance/rail-transport-safety-and-technical-standards-if-theres-no-brex-it-deal#recognition-of-documentation>

¹⁰ See The Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/677).

¹¹ See The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/700).

¹² <http://www.legislation.gov.uk/ukxi/2019/837/memorandum/contents>

complied with in relation to the allocation of access to service facilities and related services.

Power to enable the rail regulator to charge a fee to carry out an economic equilibrium test

- 2.15 Commission Implementing Regulation (EU) 1795/2018 came into effect on 1 January 2019. The Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019 corrected the majority of deficiencies in the Implementing Regulation. However, the instrument did not make amendments for Brexit to the provision of the Implementing Regulation that allows the Office of Rail and Road as rail regulator to charge a fee to carry out an economic equilibrium test.
- 2.16 This instrument makes the relevant amendment removing a reference to Member States with the rail regulator continuing to be able to charge a fee to carry out an economic equilibrium test, subject to the requirements in the Implementing Regulation. The Office of Rail and Road has indicated that it has no current plans to impose such a fee, but may do so in the future in the light of experience of administering the test.¹³

What will it now do?

- 2.17 The 2006 Regulations will now contain provisions establishing a two year limit for the recognition of EU Part A safety certificates in Great Britain, which will apply to EU Part A safety certificates issued before Brexit, enabling a smooth and effective transition. This means EU Part A safety certificates issued by an EU member state after Brexit will no longer be recognised in Great Britain.
- 2.18 All the other parts of the instrument are designed to ensure that legislation will continue to function so far as possible as it did prior to Brexit with the minor changes discussed above, providing certainty and confidence for business. Most of the amendments are minor consequential changes, such as amending references to ‘Member State’ where this should, after Brexit, refer to the United Kingdom or Great Britain and amending references to EU legislation by removing them or replacing them with a more appropriate domestic reference.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

- 3.1 This instrument corrects minor drafting errors identified by the Department in the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 and the Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019. This instrument also makes corrections to drafting errors highlighted by the JCSI in their fifty-eighth report of Session 2017-2019 in two rail Brexit instruments, the Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019 and the Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019. These will also be corrected by this instrument. In consequence of these errors the free issue procedure is being applied.

¹³ See paragraph 5.36 of https://orr.gov.uk/data/assets/pdf_file/0013/40801/guidance-on-the-economic-equilibrium-test.pdf

- 3.2 In respect of the Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019, the JCSI identified that two references in the Regulations appeared to be incorrect. In regulation 68(a)(i), there was duplication of sub-paragraphs in the reference to regulation 23(4) to (10), (9) and (10). In addition, regulation 82 referred to a non-existent provision of the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016. The Department has agreed that these references are incorrect and corrects them in this instrument.
- 3.3 The Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 inserts a new Schedule 7 into the Railways (Safety Management) Regulations (Northern Ireland) 2006 (the “2006 N.I. Regulations”). Paragraph 2 defines a number of terms for the purposes of the new Schedule including a definition of “risk to whole” which the JCSI identified did not appear elsewhere in the Schedule. The Department acknowledged the error and committed to correcting it, highlighting that the term “risk to society as a whole” appears in paragraph 12(3)(f) of new Schedule 7, and it is this term that should have been defined in paragraph 2 instead of “risk to whole”. In addition, the JCSI also considered that the meaning of “whole society” in paragraph 14 of new Schedule 7 was unclear, in particular in view of the drafting error in respect of the definition of “risk to society as a whole” in paragraph 2. This instrument corrects these references as they now appear both in the amended 2006 NI Regulations and also makes the equivalent changes to the corresponding provisions in the amended 2006 Regulations. Other related changes are also made to the relevant Schedules in both sets of Regulations on a consistent basis.
- 3.4 The Government considers that this instrument should be made using the ‘made affirmative’ procedure provided for in paragraph 5(2) of Schedule 7 of the EU Withdrawal Act. Under this procedure, an instrument which would otherwise be subject to the draft affirmative procedure 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 has to be approved by resolution of each House in Parliament within 28 days of its being made, and if not so approved, will lapse and cease to have legal effect.
- 3.5 The Government recognises that using the made affirmative procedure is unusual but in this instance, considers that the instrument needs to be in place as a matter of urgency for when the UK leaves the EU. This instrument will maintain certainty and clarity for operators that the legislative framework will continue to function effectively after Brexit. This instrument is required to reinstate Commission Implementing Regulation (EU) 2017/2177 on access to service facilities following its revocation by the Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019. As this Implementing Regulation has now come fully into effect in advance of the UK leaving the EU, it will need to be retained as part of domestic law, in line with Government policy of preserving on the statute book all EU law in effect on exit day. The power to reinstate this legislation under section 2(2) of the European Communities Act 1972 will not be available after the UK leaves the EU. In addition to this, this instrument is required to discharge the commitments set out by Government in the Technical Notice and in the Explanatory Memorandum for the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019, and to provide certainty and clarity to industry in respect of the two year limit imposed on the recognition of safety certificates.

- 3.6 The use of the made affirmative procedure will require both Houses of Parliament to debate and approve this instrument for it to remain in force and the Government welcomes this debate.

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. Regulation 7(1) to (4) and (8), which among other things implement the two year recognition period for EU issued Part A safety certificates issued before Brexit extends to Great Britain only, as do Regulations 3 and 11 and Schedule 1. Regulations 4, 7(5) to (7), 8, and 12 and Schedule 2 apply to Northern Ireland only. All remaining provisions apply to the UK as a whole.

5. European Convention on Human Rights

- 5.1 The Minister of State for Transport, Chris Heaton-Harris MP, has made the following statement regarding human rights:

“In my view the provisions of the Railways (Safety, Access, Management and Interoperability) (Miscellaneous Amendments and Transitional Provision) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 All provisions of this instrument save regulations 3 and 4 are 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 Brexit, 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.
- 6.2 Regulations 3 and 4 of this instrument are made under section 2(2) of the European Communities Act 1972 which, among other things, enables regulations to be made for the purpose of implementing EU obligations of the UK. While the UK is a member of the EU its obligations to implement EU legislation continue.

7. Policy background

What is being done and why?

- 7.1 This instrument gives clarity and certainty to industry by amending the 2006 Regulations by inserting provisions for the time-limited recognition of EU issued Part A safety certificates after Brexit. The new provisions establish that existing EU Part A

safety certificates will be recognised as valid in Great Britain for a maximum of two years after Brexit, or until expiry, whichever is sooner. At this point, the holders of EU Part A safety certificates will need to have applied to the ORR and obtained a Part A safety certificate and a Part B safety certificate to continue operating trains in Great Britain, but will not have to be established in the UK to do so. EU Part A safety certificates issued after Brexit will not be recognised in the UK within this two-year recognition period.

- 7.2 A person who only holds a post Brexit issued EU Part A certificate will therefore need to apply separately for a Part A Certificate from the ORR in the normal way to be able to operate trains lawfully in Great Britain and without committing a criminal offence. From the second anniversary of Brexit this will also be the case as regards persons holding pre-Brexit Part A certificates issued in other EU states. This is outlined further in point 5.2 in Part 2 of the annex to this Explanatory Memorandum.
- 7.3 The instrument addresses a number of minor deficiencies to a number of pieces domestic legislation and EU implementing and delegated legislation. None of these amendments make significant changes to policy and are made to ensure the legislative framework continues to operate effectively after the UK leaves the EU, providing certainty and clarity to business.
- 7.4 As noted above, certain provisions of this instrument extend to Northern Ireland in respect of which rail transport is a transferred matter under the Northern Ireland Act 1998. The UK Government remains committed to maintaining devolution in Northern Ireland. It has been agreed, in the absence of a functioning Northern Ireland Executive, that the UK Government will make the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments in order to ensure a functioning statute book across the UK, including in Northern Ireland for exit day.

8. European Union (Withdrawal) Act 2018

- 8.1 This instrument is being made using the power in section 8 of the EU Withdrawal Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the European Union. This instrument is also made under paragraph 21 of Schedule 7 to that Act. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 There are no plans to consolidate this legislation.

10. Consultation outcome

- 10.1 The substantive policy purpose of this instrument is the introduction of the two-year recognition period for rail EU Part A safety certificates issued before Brexit. The Department for Transport conducted an informal consultation with stakeholders from the rail sector, from 23rd August 2018 to 14th September 2018, where the two-year limited recognition period, amongst other issues, was discussed. A formal consultation was not considered necessary or appropriate in the light of the nature of the changes proposed.

- 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, the 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 as regards the two year transition period, which they viewed as pragmatic and proportionate for addressing the deficiencies in the legislation in preparation for the UK leaving the EU.
- 10.6 The Department has been working closely with the Office of Rail and Road to prepare the single operator using an EU issued Part A safety certificate for the actions it will need to complete as the UK leaves the EU. The operator has since initiated the process of applying to the Office of Rail and Road for relevant documentation.
- 10.7 The Department has been working closely with policy officials from the Department for Infrastructure in Northern Ireland who were consulted on the content of this SI. Drafts of the SI and EM have been shared with key rail stakeholders including Network Rail and the ORR. No concerns have been raised.

11. Guidance

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

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An impact assessment has not been produced for this instrument as the impact will be limited to the extent that the overall costs or benefits to business will be less than £5 million per year.

13. Regulating small business

- 13.1 The legislation has no, or no significant effect, on activities that are undertaken by small businesses.

14. Monitoring & review

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

15. Contact

- 15.1 Selene Wilson telephone: 07977 421 151 or email: selene.wilson@dft.gov.uk or Peter Lovitt telephone 07970 312 085 or email peter.lovitt@dft.gov.uk at the Department for Transport, can be contacted with any queries regarding the instrument.
- 15.2 Dan Moore, Director, Rail Strategy, Analysis and Brexit at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister of State for Transport, Chris Heaton-Harris MP, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EU (Withdrawal) Act SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal 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) Act 2018

1. Appropriateness statement

- 1.1 The Minister of State for Transport, Chris Heaton-Harris MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Railways (Safety, Access, Management and Interoperability) (Miscellaneous Amendments and Transitional Provision) (EU Exit) Regulations 2019 do no more than is appropriate.”

- 1.2 This is because the changes this instrument makes to the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019, other previous Brexit instruments and the relevant EU implementing and delegated legislation do no more than is strictly necessary to ensure that those Regulations (and the underlying legislation they amend) and the relevant EU implementing and delegated legislation function correctly once the UK has left the EU.

2. Good reasons

- 2.1 The Minister of State for Transport, Chris Heaton-Harris 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 that the legislative framework that sets out the rules and requirements relating to aspects of the rail regulatory regime, continues to function after Brexit. For this to happen without causing uncertainty for impacted organisations, technical deficiencies in the relevant retained EU legislation must be addressed using this instrument.

3. Equalities

- 3.1 The Minister of State for Transport, Chris Heaton-Harris MP, has made the following statement:

“The Railways (Safety, Access, Management and Interoperability) (Miscellaneous Amendments and Transitional Provision) (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 Minister of State for Transport, Chris Heaton-Harris MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Chris Heaton-Harris MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. This Act does not extend to Northern

Ireland, and as the instrument extends 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. Criminal offences

5.1 The Minister of State for Transport, Chris Heaton-Harris 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 Railways (Safety, Access, Management and Interoperability) (Miscellaneous Amendments and Transitional Provision) (EU Exit) Regulations 2019.”

5.2 These are:

- It is an offence under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 for an operator to operate a train in relation to any infrastructure on the mainline railway unless the operator holds a current Part A safety certificate in relation to the operation in question. Currently a Part A safety certificate issued by a safety authority in another EU member state is deemed equivalent for these purposes. The introduction of a two year recognition period by this instrument will however mean that operators who operate a train in Great Britain after the end of this period whilst only holding an EU Part A safety certificate will then be committing an offence. The new provisions will also extend the offence of operating without a certificate to operators who operate a train in Great Britain during the two year period whilst only holding an EU Part A safety certificate issued after Brexit. This is because any operator seeking to use an EU Part A safety certificate after the two year recognition period, or using an EU Part A safety certificate issued after Brexit during the two year recognition period, will be using a certificate that is no longer valid in Great Britain, and will therefore be committing an offence.
- 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.
- I consider that extending the offence will not make it more likely that such an offence will occur in future, as the maximum two year period during which EU Part A safety certificates are recognised in Great Britain allows enough time for a train operator in Great Britain with an EU Part A safety certificate to apply to the Office of Rail and Road for Part A safety certificates. As the requirements for obtaining a Part A safety certificate issued by the Office of Rail and Road are the same as those for EU Part A safety certificates, there is no reason an application should be unsuccessful where it satisfies all the requirements.

6. Urgency

6.1 The Minister of State for Transport, Chris Heaton-Harris MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view, by reasons of urgency it is necessary to make the Railways (Safety, Access, Management and Interoperability) (Miscellaneous Amendments and Transitional Provision) (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.”

6.2 This is in order to ensure the Regulations 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 legislative framework will continue to function effectively. The made affirmative procedure still allows for parliamentary scrutiny as Parliament will need to approve the Regulations for them to remain in force.