

EXPLANATORY MEMORANDUM TO
THE RAIL PASSENGERS' RIGHTS AND OBLIGATIONS (AMENDMENT)(EU
EXIT) REGULATIONS 2018

2018 No. 1165

1. Introduction

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

2. Purpose of the instrument

- 2.1 Regulation (EC) No. 1371/2007 on Rail Passengers' Rights and Obligations ("the EU Regulation") contains several provisions that will not be fully effective once the EU Regulation becomes retained EU law following the United Kingdom's withdrawal from the EU. This instrument amends or deletes such provisions of the EU Regulation to allow it to operate effectively once the UK has left the European Union. It also makes consequential changes to three related sets of domestic regulations, the Rail Passengers' Rights and Obligations Regulations 2010, the Rail Passengers' Rights and Obligations (Exemptions) Regulations 2014 and the Rail Passengers Rights and Obligations (Designation and Enforcement) Regulations (Northern Ireland) 2017.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The EU Regulation provides for the rights of rail passengers on the EU's railways, relating to ticketing, liability for accidents and loss of luggage, insurance requirements, compensation for delays and cancellations, assistance for people with reduced mobility, and carriage of bicycles on trains. The EU Regulation applies to both domestic and cross border travel, and grants rights to passengers on all rail journeys within the EU. Member States are, however, permitted to grant exemptions from certain provisions of the EU Regulation.

Why is it being changed?

- 2.3 There are elements of the EU Regulation which will no longer operate effectively or will no longer be appropriate after the UK leaves the EU.

What will it now do?

- 2.4 The EU Regulation will be fully domestic in scope and application, and will no longer make references to EU institutions. The rights to compensation etc are unaffected by the changes to the EU Regulation, and passenger rights will be identical immediately before and after exit day. Paragraphs 7.1 and 7.2 of the Explanatory Memorandum set out further information on the detailed changes being made to the EU Regulation and why they are needed. However, there will no longer be power to make exemptions or derogate from the provisions of the EU Regulation after the current exemptions expire.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was presented to the Sifting Committees for sifting on 10th October 2018. On 23rd October 2018, the Sifting Committees considered those Regulations and recommended that the negative procedure should apply to them. The Minister has, following that recommendation, approved and made the instrument.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister of State and Minister for London has made the following statement regarding Human Rights:

“In my view the provisions of the Rail Passengers’ Rights and Obligations (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is being made to amend certain provisions of Regulation (EC) 1371/2007 on rail passengers’ rights and obligations, as these provisions will no longer operate effectively after the EU Regulation is incorporated into UK law and the UK has left the European Union. The European Union (Withdrawal) Act 2018 (“the Act”) repeals the European Communities Act 1972 on “exit day”. The Act creates a new category of law in the UK (“retained EU law”), which includes EU Regulations which are in force at exit day, and incorporates them into UK law. Section 8 of the Act allows Ministers to make regulations to make any amendments which are appropriate to retained EU law, to ensure that that legislation works effectively in the UK after exit day. For instance, it will no longer be appropriate for the UK to have obligations to report matters or send information or reports to the European Commission as the UK will no longer be a Member State, so references to those obligations or to that status will have to be removed or amended. In addition, there are provisions in retained EU law which place obligations on EU agencies or bodies, or give them power to legislate or regulate, which will no longer be appropriate after the UK leaves the EU.
- 6.2 The EU Regulation provides for the rights of rail passengers on the EU’s railways. It contains a number of core provisions which are applicable to all services within the EU (domestic and cross border). These include provisions on ticketing, liability for accidents and loss of luggage and insurance requirements. It also contains “non-core” provisions including on compensation for delays and cancellations, assistance for

persons with reduced mobility, and the carriage of bicycles on trains. It is possible for Member States to exempt certain services for a maximum of three 5-year periods from having to provide the non-core rights to passengers. In Great Britain, all domestic services are currently exempt, although in many cases equivalent or higher level protection is given to the rights of passengers (such as the Delay Repay scheme paying compensation for journey delays), through licensing conditions or franchise contracts.

- 6.3 The EU Regulation is required to be overseen by an enforcement body in each country and there is also provision for separate complaints bodies to be established. The EU Regulation has direct effect and applicability in the UK but regulations made under section 2(2) of the European Communities Act have been necessary to provide for enforcement powers and to designate enforcement and complaints bodies. For Great Britain the relevant regulations are the Rail Passengers' Rights and Obligations Regulations 2010 (S.I. 2010/1504). These designate the Office of Rail and Road as the national enforcement body while the Passengers' Council (also known as Transport Focus) is designated as a complaints body for matters outside London with the London Transport Users' Committee (also known as London Travel Watch) being designated for complaints relating to London travel. Within Great Britain a further set of regulations (the Rail Passenger Rights and Obligations (Exemptions) Regulations 2014 (S.I. 2014/2793)) exempt certain services from the non-core requirements of the EU Regulation. After exit day, these two sets of Regulations will stay in force, and will operate as today.
- 6.4 In Northern Ireland, the EU Regulation applies and is enforced via NI regulations (the Rail Passengers Rights and Obligations (Designation and Enforcement) Regulations (Northern Ireland) 2017 as railways are devolved to Northern Ireland. However, the NI administration has asked the UK Government to cover amendments to the Northern Ireland domestic regulations. The key difference between the position in GB and NI is that in NI all the exemptions have been removed, and there are also different enforcement and consumer complaints bodies (in Northern Ireland, these are the Department for Infrastructure and the Consumer Council).
- 6.5 As well as making necessary amendments to the EU Regulation to take account of the UK's withdrawal from the European Union, these Regulations also make minor consequential and incidental amendments to the two sets of GB Regulations referred to in paragraph 6.3 and the Northern Ireland Regulations referred to in paragraph 6.4. These are to ensure that where the EU Regulation is referred to, the reference is now to that Regulation as amended by these regulations and also to delete references to the EU Regulation which are now no longer appropriate, for instance referring to the designation of enforcement bodies as being for the purposes of article 30 of the EU Regulation as article 30 sets out obligations for member states which will not apply to the UK following exit from the EU. The designation itself is left unchanged and enforcement powers will remain as before.

7. Policy background

What is being done and why?

- 7.1 This Statutory Instrument is made using the powers in the European Union (Withdrawal) Act 2018, to enable corrections to be made to Regulation (EC) No. 1371/2007 on Rail Passengers' Rights and Obligations to allow for the continued effective operation of the Regulation once the UK has left the EU. The instrument

removes references to “Member States”, removes requirements to send information or reports to EU organisations, and replaces references to amounts of money expressed in Euros with Pounds sterling. It also removes references to powers of the Commission to adopt subordinate legislative measures to deal with technical matters (e.g in relation to travel information and reservation systems) inserting where appropriate, references to any measures already applicable and in force in those areas. These corrections will enable the EU Regulation to continue to operate effectively on the day after the UK exits the EU, but will not make changes to the policy objectives of the legislation or the way it is implemented and enforced in the UK. The continued effective operation of the EU Regulation after the UK exits the EU will safeguard the rights that rail passengers currently have through the EU Regulation’s provisions. The instrument also makes corrections to domestic implementing legislation to bring references to the EU Regulation in line with the amendments being made to it.

- 7.2 The EU Regulation also contains a number of provisions which allow Member States to either derogate or make exemptions from the provisions of the EU Regulation, and also allow the European Commission to legislate to amend Annexes and rates of inflation regarding financial figures in the Regulation. This SI will remove those provisions from the EU Regulation (as it now applies in the UK), and the power to legislate will not be transferred to the UK Government. From a policy perspective, it was not considered that the power to legislate to amend the Annexes to the EU Regulation was particularly helpful going forward, and so it was decided not to transfer that legislative function. Thus far, the powers have not been exercised by the Commission, and there is no indication that they are going to be exercised in the foreseeable future (indeed, the EU is currently considering a recast of the EU Regulation). In relation to the ability to make exemptions and derogations (which previously relied on section 2(2) of the European Communities Act 1972), it is not considered that the Withdrawal Act regulation making powers would be able to confer a continuing free standing power to make further exemption regulations. The current exemptions will however remain in force in GB until they expire on 4 December 2019 but after exit day we will be unable to renew them as the European Communities Act will have been repealed.
- 7.3 This instrument applies to rail passenger rights which are a devolved matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument which is being amended in the present regulations. This is the Rail Passengers Rights and Obligations (Designation and Enforcement) Regulations (Northern Ireland) 2017 (S.R. 2017 No. 84). The amendments made by the present Regulations to the EU Regulation will also extend to and apply in 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 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 United Kingdom from the European Union. The instrument is also made under the powers in section 23 of and paragraph 21 of Schedule 7 to the Withdrawal Act to make consequential and incidental amendments. 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 The Department has no plans to consolidate rail passenger rights legislation.

10. Consultation outcome

10.1 A formal consultation was not carried out as development of this instrument did not involve making any policy decisions, since the intention is to enable the EU Regulation to continue to operate as it does now. A number of stakeholder roundtables and workshops have been held to discuss the rail EU exit legislative programme and informal discussions in some cases, to allow for views to be expressed. The purpose of this SI did not attract any comment.

10.2 In addition, we shared an early draft of these Regulations with colleagues in Northern Ireland as this is a devolved area. During the discussions, colleagues in the Department for Infrastructure asked us if we would consider making amendments to NI legislation in this instrument. They were content with the proposed changes to the EU Regulation.

11. Guidance

11.1 There is no Government guidance associated with this instrument. The effect of the instrument is to remedy deficiencies in the retained EU Regulation in order to enable it to continue to operate effectively after the UK's withdrawal from the European Union. No new obligations are being created.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the Regulations will maintain the current status quo in terms of regulatory standards to be met.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the legislation will maintain existing regulatory standards unchanged, and therefore there will be no, or no significant, impact on small businesses.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Lynn Stevens at the Department for Transport Telephone: 0207 944 4885 or email: lynn.stevens@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Fiona Walshe, Deputy Director for Passenger Experience at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jo Johnson MP, Minister of State and Minister for London 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	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.

		alongside all EUWA SIs	
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. Sifting statement(s)

- 1.1 The Minister of State and Minister for London, Jo Johnson M.P. has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Rail Passengers’ Rights and Obligations (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: the Regulations make the minimum changes to the EU Regulation to ensure that it operates effectively after exit day. There are no changes of policy in the EU Regulation and the status quo will continue to operate after exit day. There is no diminution in rights for passengers owing to these Regulations.

2. Appropriateness statement

- 2.1 The Minister of State and Minister for London, Jo Johnson MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Rail Passengers’ Rights and Obligations (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because: as set out in paragraph 7.1 and 7.2 of the Explanatory Memorandum, the minimum changes possible to ensure that the EU Regulation operates properly have been made, and no more detailed changes have been made to the policy or practice of the EU Regulation. The only changes made to regulations domestic regulations for Great Britain and Northern Ireland which supplement or implement aspects of the EU Regulation are ones that are consequential on or incidental to the amendments made to the EU Regulation

3. Good reasons

- 3.1 The Minister of State and Minister for London, Jo Johnson MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are: there are provisions in the EU Regulation which will fail to operate effectively in UK law after the UK leaves the EU (and the EU Regulation becomes part of UK law, through section 4 of the Withdrawal Act). It is important that the law should be accessible and should also operate effectively after the UK leaves the EU. These Regulations make the minimal changes necessary to ensure that the EU Regulation operates effectively in UK law after exit day, and rail passengers still have the same rights as before exit day.

4. Equalities

4.1 The Minister of State and Minister for London, Jo Johnson MP has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

4.2 The Minister of State and Minister for London, Jo Johnson MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Jo Johnson MP have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.

4.3 These Regulations do not alter the policy as it currently stands. They make the minimal changes necessary to maintain the status quo and ensure that the EU Regulation continues to operate effectively after exit day. Therefore there are no equality impacts (positive or negative) on people who share protected characteristics from these Regulations.

5. Explanations

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