

## EXPLANATORY MEMORANDUM TO

### THE RAILWAYS (ACCESS, MANAGEMENT AND LICENSING OF RAILWAY UNDERTAKINGS) (AMENDMENTS ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 518

#### 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 The instrument amends the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the “2016 Regulations”), as amended by the Railways (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations 2019 (the “2019 Regulations”), to rectify deficiencies that will arise from the United Kingdom’s (UK’s) exit from the European Union (EU).
- 2.2 Additionally, it will make appropriate corrections to four pieces of directly applicable tertiary legislation and revoke three pieces of directly applicable tertiary legislation to reflect the UK’s departure from the EU.

#### *Explanations*

##### What did any relevant EU law do before exit day?

- 2.3 The 2016 Regulations implemented Directive 2012/34/EU (the Recast Directive) and contained new requirements on:
  - Access to railway infrastructure and services;
  - Infrastructure management and independence of railway undertakings;
  - Infrastructure charging;
  - Allocation of infrastructure capacity; and
  - Appeals to the regulator.
- 2.4 The 2019 Regulations amended the 2016 Regulations by implementing Directive 2016/2370/EU (the Market Pillar Directive). This contained new requirements on:
  - The independence and impartiality of the infrastructure manager;
  - Financial transparency for infrastructure managers; and
  - New requirements on regulatory bodies.
- 2.5 The Recast Directive and Market Pillar Directive contained powers for the European Commission to make additional tertiary legislation in a variety of areas. There are a number of deficiencies within the tertiary legislation that arise from EU exit that need to be corrected and in some cases tertiary legislation is being revoked as they are not appropriate to retain in domestic law post EU exit.
- 2.6 The following EU tertiary legislation will be corrected:

- Commission Implementing Regulation (EU) No 869/2014 of 11 August 2014 on new rail passenger services;
- Commission Implementing Regulation (EU) 2015/10 of 6 January 2015 on criteria for applicants for rail infrastructure capacity and repealing Implementing Regulation (EU) No 870/2014;
- Commission Implementing Regulation (EU) 2015/909 of 12 June 2015 on the modalities for the calculation of cost that is directly incurred as a result of operating the train service;
- Commission Implementing Regulation (EU) 2016/545 of 7 April 2016 on procedures and criteria concerning framework agreements for the allocation of rail infrastructure capacity; and
- Commission Implementing Regulation (EU) 2018/1795 of 20 November 2018 laying down procedure and criteria for the application of the economic equilibrium test pursuant to Article 11 of Directive 2012/34/EU of the European Parliament and of the Council.

2.7 The following EU tertiary legislation will be revoked:

- Commission Implementing Regulation (EU) 2015/1100 of 7 July 2015 on the reporting obligations of the Member States in the framework of rail market monitoring. This is being revoked as it sets out requirements for Member States to report to the European Commission regarding the rail sector. As the UK will no longer be a Member State and will not be reporting information to the Commission this legislation will be redundant after EU exit.
- Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services. Article 2 of the regulation, which provides exemptions to the legislation, came into force on 1st January 2019 while the UK is still an EU Member State. However, the rest of the legislation does not apply until 1st June 2019, by which time the UK will have left the EU. As the remaining articles of the regulation will not come on to the domestic statute book as retained EU law, Article 2 will be deficient and therefore is being revoked.
- Commission Delegated Decision (EU) 2017/2075 replacing Annex 7 to Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area. This Annex prescribes the process that must be followed by infrastructure managers when allocating access to railway infrastructure, leading to the establishment of the working timetable. This Annex has been restated, with deficiencies removed, as Schedule 4 of the 2016 Regulations (this amendment was made in the 2019 Regulations), removing the need for this Delegated Decision.

*Why is it being changed?*

2.8 The changes in this instrument are required to ensure that the legislative framework for rail markets will continue to function effectively after the UK leaves the EU. The instrument will correct deficiencies in both domestic legislation and those pieces of EU tertiary legislation that are brought into domestic law by the EU (Withdrawal) Act, providing clarity around aspects of the rail regulatory regime.

What will it now do?

- 2.9 By correcting deficiencies it will ensure that the legislation will continue to function so far as possible as it did prior to EU exit. Most of the amendments are minor consequential changes, such as amending references to a Member State where this should, after EU Exit, refer to the United Kingdom and amending references to EU legislation by removing them or replacing them with a more appropriate domestic reference. The instrument also removes some obligations on the Secretary of State, infrastructure managers and the Office of Rail and Road (ORR) to report to, or cooperate with, the European Commission or other entities in Member States, which will be inappropriate once the UK is no longer a member of the EU.

**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 18<sup>th</sup> February 2019. The Sifting Committees considered the instrument and recommended that the negative procedure should apply. The Minister has, following that recommendation, approved and made the instrument.
- 3.2 The amendments being made to the 2016 Regulations and EU tertiary legislation are technical in nature addressing deficiencies arising from the United Kingdom leaving the EU. EU tertiary legislation is revoked where it either will have no practical application post-exit for the United Kingdom or else has been restated elsewhere. These changes are to ensure that the legislation will continue to function as far as possible as it did prior to EU Exit. It is therefore considered appropriate that the instrument should be made under the negative procedure.
- 3.3 The instrument does not make any changes to the provisions in Article 18 of Commission Implementing Regulation (EU) No 869/2014 or Article 13 of Commission Implementing Regulation (EU) 2018/1795, each of which relates to fees. The Office of Rail and Road (the “ORR”) have advised that they do not currently charge a fee in their role in determining applications for access to the rail network. The Department has therefore determined that it is not essential for amendments addressing deficiencies in these provisions to be in place in time for 29 March 2019 when the UK leaves the EU.
- 3.4 The instrument also exercises powers under section 2(2) of the European Communities Act 1972. The relevant regulations are in this instrument at regulation 9(a), 13(b), 13(c) and 21(b) respectively and implement optional provisions within directly applicable tertiary legislation. These provisions implement options available to Member States in Commission Implementing Regulation (EU) 2015/909 and Commission Implementing Regulation (EU) 2016/545.
- 3.5 These optional provisions are currently applied domestically so this is required in order to put beyond doubt the validity of their exercise in domestic law and to ensure that the legislative framework continues to function as it did before exit day. The ORR and Network Rail were consulted with prior to including these provisions. The ORR noted that the United Kingdom had specifically sought the inclusion of these provisions during the negotiation of the relevant tertiary legislation with the intention that this should provide greater flexibility and considered them to be beneficial.

- 3.6 In specific terms regulation 21(b) implements derogations within Commission Implementing Regulation (EU) 2015/909, providing infrastructure managers and regulators with greater flexibility in respect of calculating the costs of running a rail service. Regulations 9(a) and 13(b) and (c) implement derogations within Commission Implementing Regulation (EU) 2016/545, relieving infrastructure managers from certain regulatory requirements regarding the allocation of infrastructure capacity, in particular where the ORR approves track access agreements in advance (as it does with Network Rail).

*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 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.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom except for Parts 2 and 5, which correct secondary legislation which apply only in England and Wales and Scotland. Part 1 is introductory while Part 3 revokes EU tertiary legislation and Part 4 amends EU tertiary legislation. These Parts extend to Northern Ireland as well as the rest of the United Kingdom and, so far as they extend to Northern Ireland, are being made on behalf of, and with the agreement of, the Northern Ireland Executive.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom except for Parts 2 and 5, which correct secondary legislation which apply only in England and Wales and Scotland. Part 1 is introductory while Part 3 revokes EU tertiary legislation and Part 4 amends EU tertiary legislation. These Parts apply in relation Northern Ireland as well as the rest of the United Kingdom and, so far as they apply in relation to Northern Ireland, are being made on behalf of, and with the agreement of, the Northern Ireland Executive.
- 4.3 Amendments to correct deficiencies arising from EU exit in the regulations on the access and management of rail infrastructure in Northern Ireland (the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016) (these correspond to the 2016 Regulations) are being brought forward in a separate instrument.

#### **5. European Convention on Human Rights**

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

#### **6. Legislative Context**

- 6.1 The European Union (Withdrawal) Act 2018 (“EU (Withdrawal) Act”), makes provision for repealing the European Communities Act 1972 and will preserve EU law as it stands at the moment of withdrawal, converting this into UK law. It enables the creation of a new body of domestic legislation by converting the text of directly applicable EU legislation into domestic instruments, as well as saving EU-derived domestic legislation which was made to implement the UK’s obligations as an EU Member State.

- 6.2 The EU (Withdrawal) Act also contains powers to make secondary legislation to enable Ministers and the devolved administrations to fix deficiencies in retained EU law, to ensure that the UK's legal system continues to function properly outside of the EU.
- 6.3 As detailed in paragraphs 3.4 to 3.6, the instrument also exercises powers under Section 2(2) of the European Communities Act 1972 in order for optional provisions in directly applicable tertiary legislation to continue to apply domestically after exit day.
- 6.4 To facilitate the liberalisation of EU rail markets, the EU has, since the early 1990s, introduced packages of legislative measures aimed at boosting competition and opening up markets.
- 6.5 This instrument corrects deficiencies in existing legislation implementing and giving effect to these packages arising as a result of the UK's withdrawal from the EU. These deficiencies are found both in domestic legislation and in directly applicable EU legislation.
- 6.6 Three key pieces of EU legislation formed the basis of EU regulation of the railways in the 1990s ("the Initial EU Directives"). These were as follows:
- Council Directive 91/440/EEC on the development of the Community's railways, which required Member States to grant rail companies independence from government and introduce commercial rail management techniques, as well as separating the management of infrastructure from transport management;
  - Directive 95/18/EC which standardised the licensing of railway undertakings;
  - Directive 95/19/EC (since repealed) which dealt with infrastructure capacity allocation and the charging of infrastructure fees.
- 6.7 The Initial EU Directives were implemented in Great Britain largely by the Railways Regulations 1992 and subsequently by the Railways Regulations 1998 which revoked the 1992 Regulations.
- 6.8 The Initial EU Directives have been heavily amended and expanded since the late 1990s in four tranches of amending legislation known as "packages".
- 6.9 **First Railway Package:** The 2001 "First Railway Package" aimed further to stimulate fair competition in the rail market and consisted of three directives (Directives 2001/12/EC amending Directive 91/440/EEC, Directive 2001/13/EC amending Directive 95/18/EC, and Directive 2001/14/EC repealing Directive 95/19/EC). This package included requirements for separate accounts for infrastructure managers and service operators and for independent national regulatory bodies to guarantee fair access to rail infrastructure.
- 6.10 **Second Railway Package:** This package of legislation focused on rail freight markets. Directive 2004/51/EC further amended Directive 91/440/EEC to liberalise national and international freight services on the European network.
- 6.11 **Third Railway Package:** The third railway package consisted of legislation that opened up the market for international passenger services and strengthened passenger rights for rail passengers in the EU and provided for licensing and certification of train drivers.

- 6.12 Key directives were Directive 2007/58/EC which was implemented into domestic legislation by the Railways Infrastructure (Access and Management) (Amendment) Regulations 2009 (amending the earlier Railways Infrastructure (Access and Management) Regulations 2005) and Directive 2007/59/EC which was implemented by the Train Driving Licences and Certificates Regulations 2010. Passenger rights provisions were set out in Regulation (EC) 1371/2007. As this Regulation was directly applicable, it did not require implementation into domestic law but regulations were made for enforcement purposes, (the Rail Passengers' Rights and Obligations Regulations 2010) and for certain exemptions to be given effect to (the Rail Passengers' Rights and Obligations (Exemptions) Regulations 2009). A further directly applicable EU Regulation, Regulation (EC) 1370/2007 set out provisions applicable to the letting of rail franchises.
- 6.13 **The Recast Directive:** The Initial EU directives, and various of the subsequent amending directives detailed above were consolidated by Directive 2012/34/EU of 21 November 2012 establishing a single European railway area (recast) (the “Recast Directive”). It also harmonised terminology and eliminated the need to cross refer to different directives.
- 6.14 The Recast Directive was implemented in Great Britain by the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (“the 2016 Regulations”). There were separate implementing regulations in Northern Ireland (the Railways Infrastructure (Access, Management and Licensing of Undertakings) Regulations (Northern Ireland) 2016).
- 6.15 **Fourth Railway Package:** The Fourth Railway Package of EU legislation covers both rail markets (“the Market Pillar”) and technical standards and safety (the “Technical Pillar”). The Market Pillar comprises Directive 2016/2370/EU (the “Market Pillar Directive”) and two directly applicable regulations – Regulation (EU) 2016/2338, which amends Regulation (EC) 1370/2007 (referenced in paragraph 6.12) and Regulation (EU) 2016/2337 (this repeals Regulation (EEC) 1192/69 on the normalisation of the accounts of railway undertakings).
- 6.16 The Market Pillar Directive was implemented into domestic law in Great Britain by The Railways (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations 2019 (the “2019 Regulations”) which amended the 2016 Regulations. This instrument amends the 2016 Regulations, as amended by the 2019 Regulations by correcting deficiencies associated with EU exit.
- 6.17 In addition to the regulations that implemented the Market Pillar and Recast Directives, this instrument also revokes, or makes corrections to, directly applicable tertiary legislation in order to correct deficiencies associated with EU exit. The list of this tertiary legislation can be found at paragraphs 2.6 and 2.7 in this memorandum.
- 6.18 As detailed in paragraph 3.3 of this memorandum, there are deficiencies caused by the UK’s exit from the EU in the provisions relating to fees in two of the pieces of tertiary EU legislation that are being amended in this instrument (Commission Implementing Regulation (EU) No 869/2014 and Commission Implementing Regulation (EU) 2018/1795). These deficiencies are not being corrected as they are not required to be in place in time for exit day.

## 7. Policy background

### *What is being done and why?*

- 7.1 The instrument makes amendments to the 2016 Regulations (as amended by the 2019 Regulations), as well as to relevant directly applicable tertiary legislation that will be brought on to the domestic statute book (becoming retained EU law) by the EU (Withdrawal) Act. These amendments are to correct elements of the legislation that will not function correctly once the United Kingdom leaves the EU.
- 7.2 This instrument applies to rail transport which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. It has been agreed that, absent a functioning Northern Ireland Executive, 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. This is one such instrument as it will correct deficiencies in previously directly application tertiary legislation on behalf of the Northern Ireland Executive.
- 7.3 In addition to the amendments to the 2016 Regulations, the instrument corrects four pieces of EU tertiary legislation and revokes three. Details of the specific legislation involved can be found at 2.6 and 2.7 respectively in this memorandum.
- 7.4 The amendments are to ensure that the current legislative framework continues to function after EU Exit, with deficiencies corrected.
- 7.5 These amendments are largely technical in nature. For example, the amendments made to the 2016 Regulations include amending the current definition of “cross-border agreement” by removing references to “Member States”, reflecting the fact that the UK will no longer be an EU Member State itself after EU exit. A number of similar consequential changes made by this instrument to both the 2016 Regulations and the EU tertiary legislation listed in paragraphs 2.6 and 2.7.
- 7.6 The instrument also removes some obligations which will be inappropriate following the UK’s exit from the EU. For example, in regulation 18, the instrument removes an obligation to submit certain annual reports to the European Commission providing information on the use of networks and the evolution of framework conditions in the rail sector. Similarly, the 2016 Regulations are also amended so as remove a reference to Commission Implementing Regulation (EU) 2015/1100 of 7 July 2015 on the reporting obligations of the Member States in the framework of rail market monitoring.
- 7.7 The instrument further removes requirements for main infrastructure managers to participate in a network of European infrastructure managers which was introduced by the 2019 Regulations.
- 7.8 The amendments made to the EU tertiary legislation mainly consist of replacing references to applicable EU Directives with references to the relevant regulations in domestic legislation that implemented them. These changes will ensure that the legislation will continue to function appropriately, providing certainty. Moreover, the instrument provides for the inclusion of certain optional provisions in directly applicable tertiary legislation. These provisions (discussed in paragraphs 3.4-3.6 and 6.3 of this memorandum) preserve the flexibility for industry that is currently in application.

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

8.1 This instrument is being made using the powers in section 8 of the EU (Withdrawal) Act 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. 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. The instrument is also made using powers in section 2(2) of the European Communities Act 1972 as detailed in paragraphs 3.4-3.6 to ensure optional provisions made available by directly applicable EU tertiary legislation are available.

## **9. Consolidation**

9.1 There are no plans to consolidate the legislation amended by this instrument.

## **10. Consultation outcome**

10.1 The Department conducted a public consultation 24th April 2018 to 8th June 2018 to seek views from stakeholders on how the Market Pillar Directive should be implemented into domestic legislation. Alongside this, the Department also asked stakeholders for views on three proposed EU exit related instruments, including this one.

10.2 Part 1 of the consultation sought views and opinions on separate but related proposals to implement Directive (EU) 2016/2370, the Market Pillar Directive of the Fourth Railway package in the UK. The Market Pillar Directive, which comes into effect before the UK leaves the EU, has introduced new rules on the independence and impartiality of infrastructure requirements, and, as with Regulations 1370/2007 and 2016/2338, aims to improve competition on the railways.

10.3 Part 2 of the consultation asked stakeholders for their views on the minor and technical amendments that would be useful to the general body of EU rail markets legislation (as discussed in section 6 of this memorandum) to ensure it continued to function effectively should the UK leave the EU without a withdrawal agreement.

10.4 In addition to the consultation, officials from the Department held regular meetings with colleagues from the Scottish and Welsh Governments to consider the issues raised in the consultation document in further detail. While rail policy is devolved to Northern Ireland, Department officials also met regularly with officials from the Northern Ireland Executive to ensure consistency of approach with appropriate Northern Ireland regulations that would also be needed to deal with the same issues as they arise in Northern Ireland legislation.

10.5 Five responses were received to Part 2 of the consultation. Responses did not highlight any specific concerns about the Government's proposed approach to correcting deficiencies but did raise the difficulty in identifying impacts on our EU rail markets legislation as a result of leaving the EU without further information on the wider impacts of the UK leaving the EU.

10.6 To complement the consultation and to ensure that the Government identified all the issues for our EU rail markets legislation that could arise from our exit from the EU, the Department for Transport held two working groups of stakeholders to consider EU exit and rail markets in more detail. Those invited included passenger and freight



operators, providers of cross-border services, industry representatives, the Devolved Administrations and infrastructure managers. These working groups enabled a more detailed discussion on possible impacts of EU exit and the proposed amendments to EU rail markets legislation. Again, participants expressed broad support for the Government's proposed approach as reflected in this instrument.

- 10.7 The consultation can be found at the following website address:  
<https://www.gov.uk/government/consultations/rail-markets-implementing-the-market-pillar>. The Government response to the consultation was published on 21st January 2019 and can be found at the same website address as above.

## **11. Guidance**

- 11.1 The Department for Transport is not producing any specific guidance on this amendment as it is only amending deficiencies arising from the UK's withdrawal from the EU in order to maintain the current position.

## **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 following consultation we are satisfied that the impact of the instrument will be limited to the extent that the overall costs or benefits to business will be below £5m per year. Any minor impacts of familiarisation will not result in any additional costs for individuals, industry, infrastructure managers or the regulator.

## **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.

## **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. In relation to the changes to the 2016 Regulations made under section 2(2) of the European Communities Act 1972, the 2016 Regulations already include a review clause and therefore it is not appropriate in the circumstances to include a review clause in this instrument.

## **15. Contact**

- 15.1 Jonathan Gay at the Department for Transport Telephone: 07966513257 or email: [jonathan.gay@dft.gov.uk](mailto:jonathan.gay@dft.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Peter Lovitt at the Department for Transport Telephone: 07970312085 or email: [peter.lovitt@dft.gov.uk](mailto:peter.lovitt@dft.gov.uk) can be contacted with any queries regarding the instrument.
- 15.3 Dan Moore, Director, Rail EU Exit, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.4 The Parliamentary Under Secretary of State for Transport, Andrew Jones 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 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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## Part 2

### Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

#### 1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State for Transport, Andrew Jones MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is because this instrument does not fall within the categories for which use of the affirmative procedure is required as set out in paragraph 1(2) of Schedule 7 to the European Union (Withdrawal) Act 2018
- 1.3 In addition, the instrument only makes the minimum changes to the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the “2016 Regulations”) and the associated tertiary legislation to ensure that they continue to operate effectively after exit day. There are no changes of policy and the status quo will continue to operate after exit day.

#### 2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for Transport, Andrew Jones MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 2.2 This is because the changes this instrument makes to the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (as amended), as well as the relevant EU tertiary legislation, are technical in nature and do no more than is strictly necessary to ensure that those Regulations and the relevant EU tertiary legislation function correctly once the UK has left the EU. The specific changes are set out in the Policy Background section of the Explanatory Memorandum at paragraphs 7.1 to 7.8.

#### 3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for Transport, Andrew Jones MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

- 3.2 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 exit. For this to happen without causing uncertainty for impacted organisations, technical deficiencies in the relevant retained EU legislation must be corrected using this instrument.

#### **4. Equalities**

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

“The Railways (Access, Management and Licensing of Railway Undertakings) (Amendments 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.

- 4.2 The Parliamentary Under Secretary of State for Transport, Andrew Jones MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Andrew Jones, 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”.

#### **5. Explanations**

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