

**EXPLANATORY MEMORANDUM TO**  
**THE RAILWAYS (SAFETY MANAGEMENT) (AMENDMENT) (EU EXIT)**  
**REGULATIONS (NORTHERN IRELAND) 2019**

**2019 No. 825**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Infrastructure, Northern Ireland (DfI) in conjunction with the Department for Transport and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the Instrument**

- 2.1 This instrument amends the Railways (Safety Management) Regulations (Northern Ireland) 2006 (“the 2006 Regulations”) with the purpose of making a number of technical corrections to deficiencies in the 2006 Regulations that will arise as a result of the United Kingdom (UK) leaving the European Union (EU) and to ensure that they remain fully legally operable after exit.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 The 2006 Regulations implemented Directive 2004/49/EC, (“the Railway Safety Directive”), which introduced a set of requirements to be implemented by EU Member States, with the aim of creating a common regulatory framework for railway safety across the EU. The Railway Safety Directive has led to a harmonisation of the content of safety rules, the safety certification of railway undertakings, the tasks and roles of the national safety authorities and the investigation of accidents. The Railway Safety Directive will be repealed in June 2020 by Directive 2016/798/EU (“the recast Railway Safety Directive”) which has introduced certain changes to the system of safety certification, common safety indicators (“CSIs”) and common methods of calculating accident costs, among other areas. The recast Railway Safety Directive however is not required to be transposed into the domestic law of EU member states until June 2019 (with scope for this date to be extended to June 2020) and it has not therefore been transposed in Northern Ireland or Great Britain. There is also a body of directly applicable EU tertiary legislation sitting under the Railway Safety Directive, which sets out the specifics of the safety regime and applies across the whole of the UK.
- 2.3 The 2006 Regulations have been subject to three amending instruments since they were made. The first was the Railways (Safety Management) (Amendment) Regulations (Northern Ireland) 2011, which brought into effect certain provisions of Directive 2008/110/EC, (“the Revised Safety Directive”). The second amending instrument was the Railways (Safety Management) (Amendment) Regulations (Northern Ireland) 2013, which brought into effect additional provisions of the Revised Safety Directive, in addition to the entirety of Commission Directive 2009/149/EC, on CSIs and common methods to calculate costs of accidents. The third

amending instrument was the Railways (Safety Management) (Amendment) Regulations (Northern Ireland) 2016, which brought into effect Commission Directive 2014/88/EU, which made minor technical amendments to the definitions of some of the CSIs and to the related methodology for calculating the economic costs of accidents.

- 2.4 To help secure the continuation of cross-border services between the UK and relevant EU Member States (France and the Republic of Ireland), the EU has adopted Regulation (EU) 2019/503<sup>1</sup> on certain aspects of railway safety and connectivity with regard to the withdrawal of the United Kingdom from the EU, which will provide a temporary extension to the validity of authorisations, certificates and licences required to run services, including those relating to rail safety. This is a contingency measure applicable for nine months in the event that the UK leaves the EU without a Withdrawal Agreement in place and supplements the extensive efforts already made by Government to secure these important services. This provides context for this Instrument.

*Why is it being changed?*

- 2.5 The 2006 Regulations contain a number of elements that will be inappropriate after the UK leaves the EU and which, if left unchanged, would render the 2006 Regulations deficient in certain respects post-exit. For example, there are existing requirements placed on railway undertakings to report to the European Union Agency for Railways (“the Agency”) and the Commission that will no longer be relevant post exit. This could lead to uncertainty regarding aspects of the safety regime.
- 2.6 This instrument does not make corrections to the body of directly applicable EU tertiary legislation sitting under the Railway Safety Directive. That legislation will become part of domestic law as “retained EU law” after exit day by virtue of the European Union (Withdrawal) Act 2018. Amendments to that tertiary legislation to address deficiencies are being made by the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 (the “UK 2019 Safety EU Exit Regulations”) and these will apply across the UK as a whole.

*What will it now do?*

- 2.7 The instrument will maintain the status quo, preserving the legal requirements for managing rail safety in Northern Ireland, with the relevant deficiencies corrected, thereby providing certainty and confidence for industry. Recognising the relatively greater proportionate volume of cross-border services in Northern Ireland than in Great Britain, Part A safety certificates issued in EEA Member States (including the Republic of Ireland) will continue to be recognised as valid on an ongoing basis.

### **3. Matters of special interest to Parliament**

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

- 3.1 This instrument was laid for sifting on 18<sup>th</sup> February 2019. On 5<sup>th</sup> March 2019, the European Statutory Instruments Committee of the House of Commons (ESIC) considered the instrument and recommended that the negative procedure should apply. On 6<sup>th</sup> March 2019, the Secondary Legislation Scrutiny Committee of the House of

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<sup>1</sup> Regulation 2019/503 can be found at the following link: <https://data.consilium.europa.eu/doc/document/PE-72-2019-INIT/en/pdf>

Lords (SLSC) advised the Department of their recommendation that the affirmative procedure should apply. The reason given for this recommendation was that there are several train operators providing cross-border services between the UK and EU that are using UK-issued safety certificates (Eurostar, GB Rail Freight, DB Cargo and Northern Ireland Railways) and that, because the changes made by this instrument could therefore have an impact on cross-border operations, the House of Lords might wish to debate them.

- 3.2 Following the recommendation of the SLSC the Government has given further careful consideration to the appropriate procedure for progressing this instrument.
- 3.3 This instrument is an important part of the Government's no deal preparations for rail. While most of the corrections in the instrument are minor and technical, the instrument is crucial in providing industry, passengers and the public with the confidence and certainty that, should the UK leave the EU without a deal being in place, the rail safety legislative framework will continue to function effectively. The Northern Ireland Civil Service has confirmed that securing such certainty is important.
- 3.4 This instrument contains a number of cross-references to the equivalent statutory instrument that has been drafted to address deficiencies contained in the domestic rail safety legislation for Great Britain, the GB 2019 Safety EU Exit Regulations. The SLSC similarly recommended, on 6<sup>th</sup> March 2019, that that instrument should be subject to the affirmative procedure. As both instruments contain interdependencies, it is important that these instruments are considered together and are made and come into force on the same day. If these instruments do not take effect on the same day, provisions in the Regulations that contain cross-references will become legally ineffective.
- 3.5 In light of the SLSC's recommendation and the need to ensure that the instrument is in place for exit day, the Government has concluded that the instrument should be made using the "made affirmative" procedure provided for in paragraph 5(2) of Schedule 7 to the European Union (Withdrawal) Act 2018. Under this procedure, an instrument which would otherwise be subject to the draft affirmative procedure (for instance as a result of a recommendation of ESIC or the SLSC) can be made without a draft first having been laid before and approved by resolution of each House of Parliament provided the Minister making the instrument is of the opinion that this is necessary for reasons of urgency. In such a case, the instrument still has to be approved by resolution of each House of Parliament within 28 days of its being laid and, if not so approved, will lapse and cease to have legal effect.
- 3.6 The Government recognises that using the made affirmative procedure is unusual but, in this instance, it considers that the instrument needs to be in place as a matter of urgency for when the UK leaves the EU, so as to provide confidence and certainty in that the important rail safety legal framework will function effectively; indeed, following the recommendation of the SLSC, there has not been a sufficient time window in order for this Instrument to be made using the normal draft affirmative procedure. If this instrument were to be laid as draft affirmative at this stage, it is unlikely that there would be sufficient time before exit day for debates to be held in both Houses of Parliament to approve its making. Both Houses of Parliament will nevertheless still need to debate and approve this instrument for it to remain in force and the Government welcomes full debate in this area. Given the urgent need for this instrument to be in place by exit day, for the reasons set out above, it is therefore also necessary for the instrument to come into force less than 21 days after it is made,

contrary to the usual practice. A statement regarding use of the urgent procedure is given in Part 2 of the Annex to this Explanatory Memorandum.

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

- 3.7 The territorial application of this instrument is limited to Northern Ireland. The powers under which this instrument is made cover the entire United Kingdom.

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

- 4.1 The extent of this instrument is Northern Ireland.  
4.2 The territorial application of this instrument is Northern Ireland.

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

- 5.1 Baroness Sugg CBE, Parliamentary Under Secretary of State for Transport, has made the following statement regarding Human Rights:  
5.2 “In my view the provisions of the Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 are compatible with the Convention rights.”

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

- 6.1 This instrument is made in exercise of powers in section 8 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act. The European Union (Withdrawal) Act makes provision for repealing the European Communities Act 1972 and will preserve EU law, as it stands at the moment of exit, in UK law. It enables the creation of a new body of domestic legislation by bringing the texts of directly applicable EU legislation into domestic legislation, as well as saving EU-derived domestic legislation that was made to implement the UK’s obligations as a member of the EU. The European Union (Withdrawal) Act also contains temporary powers to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in retained EU law, to ensure that the UK’s legal system continues to function properly outside the EU. The European Union (Withdrawal) Act does not preserve EU Directives. Changes made under section 8 of the European Union (Withdrawal) Act are therefore made to the relevant legislation that implements an EU Directive in the UK.
- 6.2 The legislative regime for managing rail safety in Northern Ireland is contained in the 2006 Regulations (which transpose the Railway Safety Directive) and a significant body of EU tertiary legislation which is directly applicable in Northern Ireland as throughout the rest of the United Kingdom. The directly applicable tertiary legislation that sits alongside the 2006 Regulations includes legislation dealing with:
- The format of application forms for Part A and Part B safety certificates and safety authorisations and of Part A and Part B safety certificates (Commission Regulation 653/2007/EC);
  - Common safety methods for assessing conformity with the requirements for obtaining railway safety certificates and authorisations (Commission Regulation (EU) 1158/2010 and Commission Decision (EU) 1169/2010);
  - A common safety method for supervision by national safety authorities after issuing a safety certificate or safety authorisation (Commission Regulation (EU) 1077/2012);

- A common safety method for monitoring by railway undertakings and infrastructure managers after receiving a safety certificate or safety authorisation and by entities in charge of maintenance (“ECMs”) (Commission Regulation (EU) 1078/2012);
- A common safety method for risk evaluation and assessment (Commission Implementing Regulation 402/2012/EU);
- Common safety targets for the rail system (Commission Decision 2009/460/EC, Commission Decision 2012/226/EU and Commission Implementing Decision 2013/753/EU); and
- A system of certification for entities in charge of maintenance with responsibility for freight wagons (Commission Regulation (EU) 445/2011).

## 7. Policy background

### *What is being done and why*

- 7.1 This instrument applies to rail transport, which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to maintaining devolution in Northern Ireland. The Northern Irish Civil Service has therefore prepared this instrument and explanatory memorandum. It has been agreed that, in the absence of 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.
- 7.2 This instrument is intended to allow the status quo in rail safety to continue in the event of a no deal exit, whilst correcting deficiencies as described below thereby providing continued clarity, certainty and confidence. The 2006 Regulations currently contain provisions that will no longer make sense in context, including references to the UK as a “Member State”, and those that commit the DfI to obligations that are no longer necessary. Examples are the requirement to send safety reports to the European Union Agency for Railways and to notify the other EU national safety authorities if a safety certificate issued by the DfI to a railway undertaking is being or has been revoked. These requirements are removed by this instrument. However, Regulation 2019/503, described above, does impose requirements on the holders of safety certificates and authorisations to share certain information to continue to benefit from the temporary extension of validity. The UK Government fully expects all holders of applicable documentation to do so.

### Amendments to secondary legislation

- 7.3 This instrument amends, or omits references in the 2006 Regulations that are deficient as referred to above.
- 7.4 This instrument gives effect to changes in the format of safety certificates and application forms issued by the DfI under the 2006 Regulations, and introduces the amended format for these documents as a new Schedule. These changes take account of the revocation of the relevant item of tertiary legislation (Commission Regulation (EC) 653/2007) which has prescribed the format of such certificates and applications forms. That Regulation is revoked, for the whole of the UK in the UK 2019 Safety Exit Regulations, with its provisions substantially replicated (for Great Britain) in new

schedules to the relevant GB secondary legislation, the Railways and Other Guided Transport Systems (Safety) Regulations 2006. The amendments to the 2006 Regulations made by this instrument take the same approach. A new Schedule 6 to the 2006 Regulations is inserted by this instrument, substantially reproducing the relevant provisions of the Commission Regulation. This approach has been adopted in the interests of clarity and transparency to avoid the need for numerous technical amendments to the text of the Commission Regulation (for example changing cross-references to the Railway Safety Directive to references to the 2006 Regulations) which might have been harder for users to follow, particularly in the context of forms and guidance.

## **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 to address deficiencies arising from the withdrawal of the UK from the EU. 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 the legislation amended by this instrument.

## **10. Consultation outcome**

- 10.1 As the amendments proposed by this instrument are being made to avoid deficiencies arising from the UK's withdrawal from the EU, and therefore do not provide for any material change, the DfI considered that there was not a requirement for a formal consultation on the proposed amendments. However, officials from the DfI attended stakeholder working groups and roundtable events organised by the Department for Transport as part of their work to consider the technical amendments that would be required to Westminster legislation as a result of the UK leaving the EU. Though these stakeholder events tended to concentrate on Westminster legislation, many of the issues discussed were common to the amendments contained in this instrument. DfI Officials played a full role in these stakeholder discussions and no concerns were raised.

## **11. Guidance**

- 11.1 The DfI 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. This is because the proposed amendments are minor and technical in nature and will not have any substantive effect on operations as they maintain the status quo and, in practice, will only apply to one operator, Translink, which is

publicly owned, is the sole domestic operator in Northern Ireland and jointly operates the cross-border rail service between Northern Ireland and the Republic of Ireland (the Belfast-Dublin Enterprise service). There will therefore be no cost to business and any familiarisation costs to the public operator will be minimal.

**13. Regulating small business**

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

**14. Monitoring & review**

14.1 The approach to monitoring of this legislation is for it to be monitored in the course of normal departmental business.

14.2 As this instrument is made under the European Union (Withdrawal) Act, no review clause is required.

**15. Contact**

15.1 Garry McKenna, at the Department for Infrastructure in Northern Ireland, or George Kearns, Policy Advisor on Railway Safety at the Department for Infrastructure in Northern Ireland, can be contacted with any queries on the instrument. Garry McKenna: Telephone: 028 90 540673 or email: [garry.mckenna@infrastructure-ni.gov.uk](mailto:garry.mckenna@infrastructure-ni.gov.uk). George Kearns: Telephone: 028 3885 2675 or email [george.kearns@infrastructure-ni.gov.uk](mailto:george.kearns@infrastructure-ni.gov.uk).

15.2 Dan Moore, Director, Rail EU Exit at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Sugg CBE, Parliamentary Under Secretary of State for Transport, can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018

### Part 1

#### Table of Statements under the 2018 Act

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

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



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

## Part 2

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

#### 1. Appropriateness statement

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

“In my view the Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019 do no more than is appropriate.”

- 1.2 This is the case because the changes this instrument makes to the Railways (Safety Management) Regulations (Northern Ireland) 2006 are technical in nature and do no more than is strictly necessary to ensure that those Regulations function effectively once the UK has left the EU. The specific changes are set out in the “Policy Background” section in paragraphs 7.1 to 7.4 of the Explanatory Memorandum.

#### 2. Good reasons

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

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

- 2.2 These good reasons are to ensure that:

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

#### 3. Equalities

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

“The Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 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 Baroness Sugg CBE, Parliamentary Under Secretary of State for Transport, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

#### **4. Explanations**

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

#### **5. Urgency**

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

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

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