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STATUTORY INSTRUMENTS

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**2019 No. 826**

**The Railways (Amendment) (EU Exit)  
Regulations (Northern Ireland) 2019**

**PART 1**

Introduction

**Citation, commencement and extent**

- 1.—(1) These Regulations may be cited as the Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019.
- (2) These Regulations come into force on exit day.
- (3) These Regulations extend to Northern Ireland only.

**PART 2**

**Amendments to the Railways Infrastructure (Access, Management and  
Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016**

**Amendments**

2. The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016(1) are amended in accordance with this Part.

**Regulation 2 (interpretation)**

- 3.—(1) Regulation 2 is amended as follows.
- (2) In regulation 2(1)—
- (a) Before the definition of “access rights” insert—
- ““the 1995 Directive” means Council [Directive 95/18/EC](#) dated 19 June 1995 on the licensing of railway undertakings as amended by [Directive 2001/13/EC](#) dated 26 February 2001 and [Directive 2004/49](#) dated 29 April 2004, both of the European Parliament and of the Council;”;
- (b) for the definition of “the Directive” substitute—
- ““the Directive” means [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(2), as amended from time to time, before and after exit day;”;
- (c) for the definition of “cross-border agreement” substitute—

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(1) [S.R. 2016 No. 420](#), as amended by [S.R. 2019 No. 15](#).

(2) [O.J. No. L 343](#), 14.12.12, p. 32, as corrected by [Corrigendum](#), [O.J. L 67](#), 12.3.15, p. 32.

““cross-border agreement” means any agreement between Northern Ireland and the Republic of Ireland intended to facilitate the provision of cross-border rail services;”;

(d) for the definition of “European licence” substitute—

““European licence” means a licence granted to a railway undertaking pursuant to these regulations by which the capacity of the railway undertaking as such is recognised and which authorises the undertaking to provide such train services as may be specified in the licence;”;

(e) for the definition of “international freight service” substitute—

““international freight service” means a transport service where the train crosses the border between Northern Ireland and the Republic of Ireland; the train may be joined or split (or joined and split) and the different sections may have different origins and destinations provided that all wagons cross the border;”;

(f) for the definition of “international grouping” substitute—

““international grouping” means any association of at least two railway undertakings, at least one of which is established in the United Kingdom for the purpose of providing international transport and at least one of which is established in the Republic of Ireland for that purpose;”;

(g) for the definition of “international passenger service” substitute—

““international passenger service” means a passenger service where the train crosses the border between Northern Ireland and the Republic of Ireland and where the principal purpose of the service is to carry passengers between stations located in Northern Ireland and the Republic of Ireland; the train may be joined or split (or joined and split) and the different sections may have different origins and destinations provided all the carriages cross the border;”;

(h) after the definition of “network statement” insert—

““Northern Ireland Department” means a department listed in Schedule 1 to the the Departments Act (Northern Ireland) 2016(3);”;

(i) for the definition of “public passenger transport”, “public service contract” and “public service operator” substitute—

““public passenger transport” and “public service operator” have the same meanings as in Article 2 of Regulation EC No. 1370/2007;

“public service contract” means one or more legally binding acts confirming the agreement between a competent authority and a public service operator to entrust to that public service operator the management and operation of public passenger transport services subject to public service obligations; the contract may also consist of a decision adopted by the competent authority—

(a) taking the form of an individual legislative or regulatory act, or

(b) containing conditions under which the competent authority itself provides the services or entrusts the provision of such services to an internal operator,

and for the purposes of this definition “competent authority” means any public authority or group of public authorities of Northern Ireland and the Republic of Ireland which has the power to intervene in public passenger transport in a given geographical area or any body vested with such authority, “competent local authority” means any competent authority whose geographical area of competence is not national and “internal operator” means a legally distinct entity over which

a competent local authority, or in the case of a group of authorities at least one competent local authority, exercises control similar to that exercised over its own departments and “public service obligation” has the same meaning as in Regulation EC No. 1370/2007;”;

(j) for the definition of “transit rights” substitute—

““transit rights” means rights of transit through Northern Ireland using its railway infrastructure;”.

### **Regulation 3 (scope)**

4. In regulation 3(2)(ii) for “the railway undertakings established or to be established in an EEA State” substitute “railway undertakings”.

### **Regulation 4 (access and transit rights)**

5. In regulation 4(2), for “the EEA States where the undertakings constituting the grouping are established” substitute “Northern Ireland and the Republic of Ireland”.

### **Regulation 5 (access to services)**

6. In regulation 5, omit paragraph 13.

### **Regulation 6 (access to training facilities)**

7.—(1) Regulation 6 is amended as follows.

(2) In paragraph (1), for “the requirements of Council [Directive 2004/49/EC](#)”, substitute “Part 2 of the Railways (Safety Management) Regulations (Northern Ireland) 2006(4)”.

(3) In paragraph (4), for “safety authority set up in accordance with the requirements of Council [Directive 2004/49/EC](#)”, substitute “Department”.

(4) In paragraph (8), for “Article 8”, substitute “national safety rules”.

### **Regulation 7 (cross-border agreements)**

8. In regulation 7, omit paragraphs (2) to (4).

### **Regulation 8 (management independence)**

9.—(1) Regulation 8 is amended as follows.

(2) In paragraph (1)—

(a) for “Member State” substitute “Northern Ireland Department”;

(b) for “the State” substitute “that Northern Ireland Department”.

### **Regulation 11 (indicative railway infrastructure strategy)**

10. In regulation 11(1), omit sub-paragraph (b).

### **Regulation 13 (network statement)**

11.—(1) Regulation 13 is amended as follows.

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(4) [S.R. 2006 No. 237](#), amended by [S.R. 2011 No. 261](#), [S.R. 2013 No. 237](#) and [S.R. 2016 No. 267](#).

(2) In paragraph (5), for the words from “Article 35” to the end of the paragraph, substitute “regulation 35 of the Railways (Interoperability) Regulations 2011<sup>(5)</sup>”.

(3) In paragraph (12), for “other Member States” substitute “the Republic of Ireland”.

### **Regulation 13B (European network of infrastructure managers)**

12. Omit regulation 13B.

### **Regulation 15 (infrastructure costs and accounts)**

13. In regulation 15(2), for “of Annex V of the Directive” substitute “set out in Schedule 3A”.

### **Regulation 17 (cooperation in relation to charging systems on more than one network)**

14.—(1) Regulation 17 is amended as follows.

(2) In paragraph (1)—

(a) for “within the European Union”, where those words first occur, substitute “within Northern Ireland and the Republic of Ireland”;

(b) omit “within the European Union” where those words occur for the second time.

(3) In paragraph (2), for “infrastructure managers in the European Union” substitute “infrastructure managers in Northern Ireland and the Republic of Ireland”.

(4) In paragraph (3)—

(a) for “other infrastructure managers within the European Union” substitute “infrastructure managers in the Republic of Ireland”;

(b) omit “within the European Union” where those words occur for the second time.

### **Regulation 20 (co-operation in the allocation of infrastructure capacity crossing more than one network)**

15.—(1) Regulation 20 is amended as follows.

(2) in paragraph (1), for “within the European Union”, substitute “in Northern Ireland and the Republic of Ireland”;

(3) after paragraph (2) insert—

“(2A) Infrastructure managers required by paragraph (2)(a) to cooperate in the allocation of infrastructure capacity crossing more than one network, must provide, without delay, all the information requested by the Office of Rail and Road which is necessary for the purpose of handling an appeal or an own initiative investigation on issues of access or charging relating to an international train path.”;

(4) in paragraph (5), for “the European Union” substitute “Northern Ireland”;

(5) omit paragraph (6);

(6) after paragraph (10) insert—

“(11) The Office of Rail and Road must review decisions and practices of infrastructure managers required to co-operate under this regulation, in relation to train services which cross more than one network, where those decisions and practices implement provisions in these Regulations or which otherwise facilitate international rail transport.”.

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(5) [S.I. 2011/3066](#), amended by [S.I. 2015/2022](#); there are other amending instruments but none is relevant

**Regulation 21 (framework agreements)**

16. In regulation 21(1) omit “and without prejudice to articles 101, 102 and 106 of the Treaty,”.

**Regulation 25 (declaration of specialised infrastructure)**

17. In regulation 25(2) omit “and without prejudice to articles 101, 102 and 106 of the Treaty,”.

**Regulation 34 (monitoring the rail services markets)**

18. In regulation 34, omit paragraphs (6) and (7).

**Regulation 37 (co-operation between regulatory bodies)**

19. Omit regulation 37.

**Regulation 43 (prohibition of unlicensed provision of international services)**

20. In regulation 43, in paragraph (4), for “the 2012 Directive” substitute “the Directive and a licence granted by the Office of Rail and Road pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005(6)”.

**Regulation 44 (appointment of licensing authority and grant of European licences)**

21.—(1) Regulation 44 is amended as follows.

(2) Omit paragraph (2).

(3) In paragraph (3), omit “and inform the Commission of those procedures”.

(4) Omit paragraph (14).

**Regulation 46 (monitoring, suspension and revocation of European licences)**

22.—(1) Regulation 46 is amended as follows.

(2) For paragraph (5), substitute—

“(5) Where the Department is satisfied that there is a serious doubt whether a railway undertaking to which a licence has been granted by the Office of Rail and Road pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005 complies with any requirement of those Regulations, it must without delay so notify the Office of Rail and Road.”

(3) In paragraph (14), for “European Railway Agency” substitute “the Office of Rail and Road”.

**Regulation 48 (prohibition on operating trains without a statement of national regulatory provisions)**

23. In regulation 48, in paragraph (5), for “the 2012 Directive”, substitute “the Directive and a licence granted by the Office of Rail and Road pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005”.

**Regulation 50 (conditions of SNRPs)**

24. In regulation 50, in paragraph (4), omit sub-paragraph (a).

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(6) S.I. 2005/3050, amended by S.I. 2009/2054, S.I. 2010/439, S.I. 2011/1043, S.I. 2012/2404, S.I. 2015/1682, S.I. 2016/481, S.I. 2016/645, S.I. 2019/700.

**Regulation 51 (referral for Commission’s opinion)**

25. Omit regulation 51.

**Regulation 52A (monitoring, suspension and revocation of SNRPs issued to holders of European licences)**

26. After regulation 52 insert—

**“Monitoring, suspension and revocation of SNRPs issued to holders of European licences”**

52A.—(1) This regulation applies where the Department has issued a SNRP under regulation 49 to the holder of a licence granted pursuant to any action taken by an EEA State for the purpose of implementing the Directive or the 1995 Directive.

(2) The Department must take such steps as are necessary to enable it to determine whether or not the licence holder complies with the requirements referred to in Schedule 4 as to good repute, financial fitness, professional competence and insurance cover for civil liabilities at any time the Department considers that there is serious doubt whether the licence holder complies with any of those requirements, and in doing so, the Department must treat Schedule 4 as if it applies in relation to holders of licences granted pursuant to any action taken by an EEA State for the purposes of implementing the Directive or the 1995 Directive.

(3) If, having taken the steps referred to in paragraph (2), the Department is satisfied that the licence holder does not comply with any such requirement, the Department must revoke or suspend the SNRP issued to the licence holder.”

**Schedule 2 (access charging)**

27. In Schedule 2, paragraph 6(1), omit “Subject to the provisions of articles 101, 102, 106 and 107 of the Treaty, and” .

**Schedule 3A (basic principles and parameters of contractual agreements between competent authorities and infrastructure managers)**

28. After Schedule 3 (timetable for the allocation process) insert new Schedule 3A (basic principles and parameters of contractual agreements between competent authorities and infrastructure managers), as set out in the Schedule to these Regulations.

## PART 3

### Amendments to the Train Driving Licences and Certificates Regulations (Northern Ireland) 2010

**Amendments**

29. The Train Driving Licences and Certificates Regulations (Northern Ireland) 2010(7) are amended in accordance with this Part.

## Regulation 2 (interpretation)

30.—(1) Regulation 2 is amended as follows.

(2) In regulation 2(1)—

(a) omit the definition of “the Agency”;

(b) for the definition of “the Department” substitute—

““the Department” means the Department for Infrastructure renamed as such by the Departments Act (Northern Ireland) 2016<sup>(8)</sup> and originally established as the Department for Regional Development by article 3(1) of the Departments (Northern Ireland) Order 1999<sup>(9)</sup>”;

(c) for the definition of “the Directive” substitute—

““the Directive” means [Directive 2007/59/EC](#) of the European Parliament and of the Council on the certification of train drivers operating locomotives and trains on the railway system in the Community<sup>(10)</sup>, as amended from time to time, before and after exit day”;

(d) after the definition of “employed” insert—

““European train driving licence” means a licence issued by a safety authority in accordance with article 14 of the Directive indicating that the holder satisfies medical, educational and professional skills for train driving;

““GB train driving licence” means a licence issued by or on behalf of the Office of Rail and Road under the Train Driving Licences and Certificates Regulations 2010<sup>(11)</sup> indicating that the holder satisfies medical, educational and professional skills requirements for train driving”;

(e) after the definition of “infrastructure manager” insert—

““the Office of Rail and Road” means the body established by section 15 of the Railways and Transport Safety Act 2003<sup>(12)</sup>”;

(f) for the definition of “railway undertaking” substitute—

““railway undertaking” means the holder of a safety certificate issued by the Department in accordance with regulation 5 or 7 of the Railways (Safety Management) Regulations (Northern Ireland) 2006”;

(g) after the definition of “railway undertaking” insert

““Recast Safety Directive” means Directive (EU) 2016/798 of the European Parliament and of the Council on railway safety (recast)<sup>(13)</sup>”;

(h) for the definition of “safety authority”, substitute—

““safety authority” means an authority established in an EEA state in accordance with article 16(1) of [Directive 2004/49/EC](#) of the European Parliament and of the Council on safety on the Community’s railways and amending Directive 95/18 EC on the licensing of railway undertakings and [Directive 2001/14/EC](#) on the allocation of infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification<sup>(14)</sup> or article 16(1) of the Recast Safety Directive”;

<sup>(8)</sup> [2016 c.5 \(N.I.\)](#).

<sup>(9)</sup> [S.I. 1999/283 \(N.I. 1\)](#).

<sup>(10)</sup> O.J. No. L315, 3.12.2007, p.51, amended by Commission [Directive 2014/82/EU](#) (O.J. No. L184, 25.6.2014, p.11) and Commission Directive (EU) 2016/882 (O.J. No. L146, 3.6.2016, p.22).

<sup>(11)</sup> [S.I. 2010/724](#), amended by [S.I. 2013/950](#), [2015/1798](#).

<sup>(12)</sup> [2003 c.20](#). Section 15 was amended by [S.I. 2015/1682](#), Schedule, Part 1, paragraph 2(b).

<sup>(13)</sup> O.J. No. L138, 26.5.2016, p.102.

<sup>(14)</sup> O.J. No. L164, 30.4.2004, p.44 as amended by [Directive 2008/57/EC](#) of the European Parliament and of the Council on the interoperability of the rail system within the Community (Recast) (O.J. No. L191, 18.7.2008, p.1), [Directive 2008/110/](#)

- (i) for the definition of “train driving certificate”, substitute—
    - ““train driving certificate” means a certificate issued by a railway undertaking or infrastructure manager under these Regulations indicating the infrastructure on which the holder is authorised to drive and the types of train which the holder is authorised to drive;”;
  - (j) for the definition of “train driving licence” substitute—
    - ““train driving licence” means a licence issued by or on behalf of the Department under these Regulations indicating that the holder satisfies medical, educational and professional skills requirements for train driving;”.
- (3) Omit regulation 2(2).

#### **Regulation 4 (requirements for licences and certificates)**

- 31.**—(1) Regulation 4 is amended as follows.
- (2) For paragraph (1), substitute—
    - “(1) Subject to paragraph (10) a railway undertaking must not cause or permit a person to drive a train unless that person is authorised to do so by—
      - (a) a train driving licence;
      - (b) a European train driving licence; or
      - (c) a GB train driving licence.”.
  - (3) For paragraph (3)(a), substitute—
    - “(a) a train driving licence or a European train driving licence or a GB train driving licence;”.
  - (4) In paragraphs (4), (5), (7) and (10), a train driving licence includes a GB train driving licence and a European train driving licence.
  - (5) In paragraph (9), for “train driving licence issued by a safety authority”, substitute “European train driving licence or a GB train driving licence issued”.

#### **Regulation 5 (licence and certificate characteristics)**

- 32.** In regulation 5(1), omit “issued by the Department” and “by a railway undertaking”.

#### **Regulation 13 (periodic checks to maintain validity of licence)**

- 33.** In regulation 13(1), after “a train driving licence” insert “a GB train driving licence or a European train driving licence”.

#### **Regulation 17 (monitoring)**

- 34.** In regulation 17, after paragraph (5), insert—
  - “(6) For the purposes of paragraphs (2) and (4) a train driving licence includes a European train driving licence and a GB train driving licence.”.

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EC of the European Parliament and of the Council (O.J. No. L345, 23.12.2008, p 62), Commission [Directive 2009/149/EC](#) (O.J. No. L313, 28.11.2009, p 65), [Directive 2012/34/EU](#) of the European Parliament and of the Council establishing a single European railway area (recast) (O.J. No. L343, 14.12.2012, p 32) and Commission [Directive 2014/88/EU](#) (O.J. No. L201, 10.7.2014, p 44).



**Regulation 21 (registers of recognised persons)**

- 35.—(1) Regulation 21 is amended as follows.
- (2) In paragraph (3), for “paragraphs (4) and (5)” substitute “paragraph (5)”.
  - (3) Omit paragraph (4).

**Regulation 25 (information relating to the status of train driving licences)**

36. For regulation 25 substitute—

**“Information relating to the status of train driving licences**

25. The Department must, upon request, provide information on the status of train driving licences to any employer of train drivers and may provide it to safety authorities.”.

**Regulation 27 (information in relation to international train services)**

37. For regulation 27 substitute—

**“Information in relation to international train services**

27. Railway undertakings must, upon request, provide to the Department information on the content of train driving certificates issued by them in relation to train drivers engaged on international train services and may provide it to safety authorities.”.

**Regulation 29 (trainers)**

- 38.—(1) Regulation 29 is amended as follows.
- (2) In paragraph (1), for the words “if that person” to the end substitute “if that person is a recognised trainer”.
  - (3) After paragraph (1) insert—
    - “(1A) For the purposes of paragraph (1), a recognised trainer includes a trainer accredited or recognised to act as a trainer in a member State in accordance with the requirements of article 20 of the Directive.”.

**Regulation 31 (examinations)**

39. In regulation 31(3)(b), for another “Member State” substitute “a member State”.

**Regulation 34 (suspension or withdrawal of train driving licences issued by the Department)**

- 40.—(1) Regulation 34 is amended as follows.
- (2) In paragraph (1), omit “issued by the Department”.
  - (3) for paragraph (3), after “safety authority” in both places where it occurs, insert “or the Office of Rail and Road”.

**Regulation 35 (suspension or withdrawal of other train driving licences and driver prohibition)**

41. For regulation 35, substitute—

**“Suspension or withdrawal of other train driving licences and driver prohibition**

**35.**—(1) Without prejudice to regulation 37, if the Department considers that the holder of a European train driving licence no longer satisfies a condition required for the holding of it the Department may—

- (a) inform the safety authority of this view;
- (b) give the safety authority a reasoned request for a review of the holder’s eligibility to hold the licence, or for the licence to be suspended or withdrawn; and
- (c) notify the other safety authorities of the request.

(2) Without prejudice to regulation 37, if the Department considers that the holder of a GB train driving licence no longer satisfies a condition required for the holding of it the Department must—

- (a) inform the Office of Rail and Road of this view; and
- (b) give the Office of Rail and Road a reasoned request for a review of the holder’s eligibility to hold the licence, or for the licence to be suspended or withdrawn.

(3) Pending any suspension or withdrawal of the licence, or other conclusion on the request under paragraph (1)(b) or (2)(b), the Department may prohibit the train driver from driving a train in Northern Ireland.”.

**Regulation 36 (driving certificates and driver prohibition)**

**42.** In regulation 36, for paragraph (5) substitute—

“(5) If the Department exercises the power in paragraph (4) it may inform the safety authorities.”.

**Regulation 37 (serious threat to the safety of the railway)**

**43.** In regulation 37, for paragraph (3) substitute—

“(3) If the Department takes any action under this regulation it may inform the safety authorities.”.

**Regulation 38 (appeal to the Commission)**

**44.** Omit regulation 38.

**Regulation 41 (transitional provisions)**

**45.** In regulation 41, in paragraph (2), for “at least one other Member State” substitute “the Republic of Ireland”.

**Schedule 2 (community model train driving licence and harmonised complementary train driving certificate)**

**46.**—(1) Schedule 2 is amended as follows.

(2) In the heading, omit the words “Community” and “Harmonised”

(3) In paragraph 2—

- (a) in sub-paragraph (a), omit the words “in English”;
- (b) omit sub-paragraphs (c), (e) and (f);
- (c) omit the sentence after sub-paragraph (g).

## PART 4

### Cross-border railway services

#### **Amendment to the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008**

47. In regulation 2(1) of the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008(15), for the definition of “interoperable cross-border services” substitute—  
““interoperable cross-border services” are rail services between Northern Ireland and the Republic of Ireland;”.

Signed by authority of the Secretary of State for Transport

5th April 2019

*Sugg*  
Parliamentary Under Secretary of State  
Department for Transport