This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 28th January 2019 and published on 28th January 2019 (ISBN 978-0-11-117929-1). It is being issued free of charge to all known recipients of that draft Statutory Instrument.

Draft Regulations laid before Parliament under paragraphs 1(1), 12(1) and 15(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2019 No. 0000

EXITING THE EUROPEAN UNION

TRANSPORT

The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019

Made - - - - 2019

Coming into force in accordance with regulation 1(2)

The Secretary of State, in exercise of the powers conferred by sections 8(1) and 23(1) of, and paragraph 1 of Schedule 4 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**) and with the consent of the Treasury, makes these Regulations.

In accordance with paragraphs 1(1), 12(1) and 15(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of these Regulations has been laid before Parliament and approved by resolution of each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

(3) These Regulations do not extend to Northern Ireland, subject to paragraph (4).

(4) Regulation 31 extends to England and Wales, Scotland and Northern Ireland.

(**a**) 2018 c. 16. The Secretary of State is an "appropriate authority" for the purposes of paragraph 1 of Schedule 4 to the 2018 Act (see paragraph 2(1)).

(5) Subject to paragraphs (3) and (4), an amendment, repeal or revocation made by these Regulations has the same extent as the provision amended, repealed or revoked.

Interpretation

2. In these Regulations—

"the 2005 Regulations" means the Railway (Licensing of Railway Undertakings) Regulations 2005(**a**);

"ORR" means the Office of Rail and Road, established under section 15 of the Railways and Transport Safety Act 2003(**b**).

PART 2

Amendments to the Railway (Licensing of Railway Undertakings) Regulations 2005

Amendments

3. The 2005 Regulations are amended in accordance with this Part.

Regulation 2 (interpretation)

4. In regulation 2(1) (interpretation)—

(a) omit the definitions of "the 1995 Directive", "the 2012 Directive", "EEA State" and "European licence";

(b) at the appropriate place, insert–

""railway undertaking licence" means a licence, granted by the ORR to a railway undertaking pursuant to these Regulations, which authorises the undertaking to provide such train services as may be specified in the licence;".

Regulation 4 (scope)

5.—(1) Regulation 4 (scope) is amended as follows.

(2) In paragraph (1)—

(a) after "train services" insert "in Great Britain";

(b) omit "and are established or to be established in an EEA State".

(3) In paragraph (3)—

(a) in sub-paragraph (a), omit "including a cross-border conurbation,";

(b) in sub-paragraph (b), omit ", including a cross-border region".

Part 2 (European licences)

6. In the heading of Part 2 (European licences), for "European" substitute "Railway Undertaking".

Regulation 5 (prohibition of unlicensed provision of services)

7. In regulation 5 (prohibition of unlicensed provision of services)—

(a) in paragraph (1), for "European" substitute "railway undertaking";

(**a**) S.I. 2005/3050, amended by S.I. 2010/439, 2011/1043, 2015/1682, 2016/645.
(**b**) 2003 c. 20; section 15 was amended by the Office of Rail Regulation (Change of Name) Regulations, S.I. 2015/1682.

(b) omit paragraph (4).

Regulation 6 (appointment of licensing authority and grant of European licences)

8.—(1) Regulation 6 (appointment of licensing authority and grant of European licences) is amended as follows.

(2) In the heading, for "European" substitute "railway undertaking".

(3) In paragraph (1)—

(a) omit "designated as";

(b) for "European" substitute "railway undertaking".

(4) In paragraph (2)—

(a) for "European" substitute "railway undertaking";

(b) omit "and inform the Commission of those procedures".

(5) In paragraph (3)—

(a) in the words before sub-paragraph (a), for "European" substitute "railway undertaking";

(b) omit sub-paragraph (a) (including the "and" at the end of that sub-paragraph).

(6) In paragraph (4), for "European" substitute "railway undertaking".

(7) Omit paragraph (4A).

(8) In paragraphs (7) to (11), for "European", in each place it occurs, substitute "railway undertaking".

(9) In paragraph (12)—

(a) for "European licence" substitute "railway undertaking licence";

(b) for "European Commission" substitute "Secretary of State".

(10) In paragraph (14), for "European" substitute "railway undertaking".

Regulation 7 (validity of European licences)

9. In regulation 7 (validity of European licences)—

(a) in the heading, for "European" substitute "railway undertaking";

(b) in paragraphs (1) and (2), for "European", in both places it occurs, substitute "railway undertaking".

Regulation 8 (monitoring, suspension and revocation of European licences)

10.—(1) Regulation 8 (monitoring, suspension and revocation of European licences) is amended as follows.

(2) In the heading, for "European" substitute "railway undertaking".

(3) In paragraph (1)—

(a) omit "Subject to paragraph (5),";

(b) for "European" substitute "railway undertaking".

(4) In paragraphs (3) and (4), for "European", in both places it occurs, substitute "railway undertaking".

(5) Omit paragraph (5).

(6) In paragraphs (6) to (11) and (13), for "European", in each place it occurs, substitute "railway undertaking".

(7) In paragraph (14)—

(a) for "European licence" substitute "railway undertaking licence";

(b) for "European Railway Agency" substitute "Secretary of State".

Regulation 9 (prohibition on operating trains without a statement of national regulatory provisions)

11. In regulation 9 (prohibition on operating trains without a statement of national regulatory provisions)—

(a) in paragraph (1), for "European" substitute "railway undertaking";

(b) omit paragraph (5).

Regulation 10 (statements of national regulatory provisions)

12. In regulation 10 (statements of national regulatory provisions), in paragraphs (1) and (2)(b), for "European", in both places it occurs, substitute "railway undertaking".

Regulation 11 (conditions of statements of national regulatory provisions)

13. In regulation 11 (conditions of statements of national regulatory provisions)—

(a) in paragraph (1), for "European" substitute "railway undertaking";

(b) in paragraph (4) omit sub-paragraph (a) (including the "or" at the end of that sub-paragraph).

Regulation 12 (referral for Commission's opinion)

14. Omit regulation 12 (referral for Commission's opinion).

Regulation 17 (general duties of the Rail Passengers' Council)

15. In regulation 17 (general duties of the Rail Passengers' Council)—

(a) in paragraph (1), for "European", in each place it occurs, substitute "railway undertaking";

(b) omit paragraph (2).

Regulation 19 (duties of the London Transport Users' Committee)

16. In regulation 19 (duties of the London Transport Users' Committee)—

(a) in paragraph (1), for "European", in both places it occurs, substitute "railway undertaking";

(b) omit paragraph (2).

Regulation 21 (review)

17. In regulation 21 (review) omit paragraph (2).

Schedule 2 (qualifications for European licence)

18. In Schedule 2 (qualifications for European licence)—

(a) in the heading of the Schedule, for "European" substitute "railway undertaking";

(b) in paragraphs 1, 6 and 11(1), for "European", in each place it occurs, substitute "railway undertaking".

Schedule 4 (transitional provisions relating to existing licences and licence exemptions)

19.—(1) Schedule 4 (transitional provisions relating to existing licences and licence exemptions) is amended as follows.

(2) In paragraph 2, for "Paragraphs 3 and 4 apply" substitute "Paragraph 4 applies".

(3) Omit paragraph 3.

(4) In paragraph 5, for "Paragraphs 6 and 7 apply" substitute "Paragraph 7 applies".

(5) Omit paragraphs 6 and 8.

PART 3

Consequential amendments to primary legislation

The Railway Fires Act 1905

20. In section 4 of the Railway Fires Act 1905(**a**) (definitions and application)—

(a) omit the definition of "EEA State";

(b) in the definition of "railway company", for paragraph (c) substitute—

"(c) who holds a railway undertaking licence granted pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005;".

The Insolvency Act 1986

21. In paragraph 10 of Schedule 2A to the Insolvency Act 1986(**b**) (exceptions to the prohibition on appointment of administrative receiver: supplementary provisions)—

(a) for sub-paragraph (1)(n) substitute—

"(n) in reliance on a railway undertaking licence granted pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005.";

(b) omit sub-paragraph (2B).

The Railways Act 1993

22.—(1) The Railways Act 1993(**c**) is amended as follows.

(2) In section 6 (prohibition on unauthorised operators of railway assets)—

(a) in subsection (1A), for "European" substitute "railway undertaking";

(b) in subsection (2)—

(i) omit the definition of "European licence";

(ii) at the appropriate place insert—

""railway undertaking licence" means a licence granted pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005;";

(c) omit subsection (2A).

(3) In section 59(6)(a)(i) (meaning and effect of railway administration order), for "European" substitute "railway undertaking".

(4) In section 72(2)(a) (keeping of register by the Office of Rail and Road), for "European", in each place it occurs, substitute "railway undertaking".

(5) In section 80(1A) (duty to furnish information on request)—

(**a**) 1905 c. 11; the definition of "railway company" was inserted by the Railways Act 1993 (c.43), Schedule 12, paragraph 2(2) and SR 2005/357; the definition was amended by S.I. 2005/3050 and 2016/645.

(**b**) 1986 c. 45; Schedule 2A was inserted by the Enterprise Act 2002 (c.40) section 250(2), Schedule 18; the relevant amending instruments are S.I. 2005/3050 and 2016/645.

(**c**) 1993 c. 43; Section 6(1A) and (2A) were inserted by S.I. 1998/1340 and subsequently amended by S.I. 2005/3050, sub-section(2) was amended by S.I. 2005/3050 and 2016/645; section 59(6) was amended by S.I. 2005/3050; section 72(2)(a) was amended by S.I. 2005/3050; section 80(1A) was inserted by S.I. 2005/3050 and amended by S.I. 2015/1682 and 2016/645; section 83(1) was inserted by S.I. 2005/3050; section 145(2)(ga) was inserted by S.I. 2005/3050 and subsequently amended by S.I. 2015/1682 and 2016/645; Schedule 7 was amended by S.I. 2005/3050. There are other amending instruments but none is relevant.

(a) for "European licences" substitute "railway undertaking licences";

(b) for the words from "any instrument made" to the end of paragraph (b) substitute "the Railway (Licensing of Railway Undertakings) Regulations 2005".

(6) In section 83(1) (interpretation)—

(a) omit the definition of "European licence";

(b) at the appropriate place, insert–

""railway undertaking licence" has the meaning given by section 6(2);".

(7) In section 145(2) (general restrictions on the disclosure of information), for paragraph (ga) substitute—

"(ga) for the purpose of facilitating the carrying out by the Office of Rail and Road of any of its functions under—

(i) the Railway (Licensing of Railway Undertakings) Regulations 2005, or

(ii) the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016(**a**);".

(8) In Schedule 7 (transfer of relevant activities in connection with railway administration orders)—

(a) in paragraph 1(2), in the definition of "other appointee", for "European" substitute "railway undertaking";

(b) in paragraph 4(3), for "European" substitute "railway undertaking".

The Greater London Authority Act 1999

23. In section 235(2)(b) of the Greater London Authority Act 1999(**b**) (restrictions on the disclosure of information), for the words from "or any subordinate legislation" to the end, substitute ", the Railway (Licensing of Railway Undertakings) Regulations 2005 or the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016;".

The Civil Contingencies Act 2004

24. In Schedule 1 to the Civil Contingencies Act 2004(**c**) (category 1 and 2 responders)—

(a) for paragraph 24, substitute—

"**24.** A person who provides services in connection with railways in Great Britain and who holds a railway undertaking licence granted pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005.";

(b) for paragraph 35, substitute—

"**35.** A person who provides services in connection with railways, in so far as such services are provided in Scotland, and who holds a railway undertaking licence granted pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005.".

The Railways Act 2005

25.—(1) The Railways Act 2005(**d**) is amended as follows.

(2) In section 46(7)(c) (bye-laws), for "European" substitute "railway undertaking".

(3) In section 59(5A) (consequential amendments, transitional provisions and repeals), for "European", in both places it occurs, substitute "railway undertaking".

(**a**) S.I. 2016/645.

(**b**) 1999 c. 29; section 235(2)(b) was amended by the Railways Act 2005, section 59(1), Schedule 12, paragraph 14(1) and (5)(b) and by S.I. 2005/3049, 2014/892, 2015/1682 and 2016/645.

(**c**) 2004 c. 36; paragraphs 24 and 35 of Schedule 1 were amended by S.I. 2005/3050 and 2016/645.

(**d**) 2005 c. 14; section 46(7) was amended by S.I. 2005/3050; section 59(5A) was inserted by S.I. 2005/3050.

PART 4

Amendments etc. to other legislation

The London Underground (East London Line Extension) (No. 2) Order 2001

26.—(1) Paragraph 1(2) of Schedule 11 to the London Underground (East London Line Extension) (No. 2) Order 2001(**a**) (protection for Railtrack) is amended as follows.

(2) Omit the definition of "EEA State".

(3) In the definition of "train operator"–

(a) for "European licence" substitute "railway undertaking licence";

(b) omit from "or pursuant" to "a single European railway area (recast)".

The Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002

27.—(1) Paragraph 13(6) of Schedule 11 to the Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002(**b**) (protection of railway undertakers) is amended as follows.

(2) Omit the definition of "EEA State".

(3) In the definition of "train operator"–

(a) for "European licence" substitute "railway undertaking licence";

(b) omit from "or pursuant" to "a single European railway area (recast)".

The Docklands Light Railway (Woolwich Arsenal Extension) Order 2004

28.—(1) Paragraph 15(6) of Schedule 13 to the Docklands Light Railway (Woolwich Arsenal Extension) Order 2004(**c**) (protection of railway interests) is amended as follows.

(2) Omit the definition of "EEA State".

(3) In the definition of "train operator"–

(a) for "European licence" substitute "railway undertaking licence";

(b) omit from "or pursuant" to " a single European railway area (recast)".

The British Transport Police (Police Services Agreement) Order 2004

29.—(1) Article 2 of the British Transport Police (Police Services Agreement) Order 2004(**d**) (requirement to enter into a police services agreement) is amended as follows.

(2) In paragraph (1)(b)—

(a) for "European licence" substitute "railway undertaking licence";

(b) omit from "or pursuant" to "a single European railway area (recast)".

(3) In paragraph (3), omit from "; and "EEA State"" to the end.

Central Rating List (England) Regulations 2005

30.—(1) Regulation 6(4) of the Central Rating List (England) Regulations 2005(**e**) (railway hereditaments) is amended as follows.

(2) Omit the definition of "EEA State".

(**a**) S.I. 2001/3682, amended by S.I. 2005/3050, 2016/645, there are other amendments but none is relevant.
(**b**) S.I. 2002/1066, amended by S.I. 2005/3050, 2016/645, there are other amendments but none is relevant.
(**c**) S.I. 2004/757, amended by S.I. 2005/3050, 2016/645, there are other amendments but none is relevant.
(**d**) S.I. 2004/1522, amended by S.I. 2005/3050, 2016/645.
(**e**) S.I. 2005/551, amended by S.I. 2005/3050, 2016/645, there are other amendments but none is relevant.

(3) In the definition of "licence exempt operator" and "licence holder"—

(a) for "European licence" substitute "railway undertaking licence";

(b) omit from "or pursuant" to the end.

Commission Implementing Regulation (EU) 2015/171

31. Commission Implementing Regulation (EU) 2015/171 of 4th February 2015 on certain aspects of the procedure of licensing railway undertakings is revoked.

PART 5

Transitional provisions relating to existing licences and applications

Existing European licences

32.—(1) Paragraphs (2) and (3) apply in relation to—

(a) any European licence granted by the ORR under the 2005 Regulations which has effect immediately before exit day, or

(b) any other licence so far as, immediately before exit day, it has effect as if it were a European licence as a result of Schedule 4 to the 2005 Regulations (transitional provisions relating to existing licences and licence exemptions).

(2) The licence continues to have effect on and after exit day as if it were a railway undertaking licence under the 2005 Regulations as amended by these Regulations (and the licence is to be read with such modifications as are necessary for it to do so).

(3) Any act or omission in relation to, or in reliance on, the licence that has effect immediately before exit day continues to have effect in relation to the licence on and after exit day.

Applications for European licences made before exit day

33.—(1) Paragraphs (2) and (3) apply in relation to any application made to the ORR before exit day for a European licence under the 2005 Regulations but not determined before exit day.

(2) Subject to paragraph (3), on and after exit day the application is to be treated as an application for a railway undertaking licence and the 2005 Regulations (as amended by these Regulations) apply accordingly.

(3) Any act in relation to the application that has effect immediately before exit day continues to have effect in relation to the application on and after exit day.

PART 6

Transitory provisions recognising licences granted by authorities in the EEA

Modifications to the 2005 Regulations

34. For the period of 2 years beginning with exit day, the 2005 Regulations (as amended by these Regulations) have effect with the modifications in regulations 35 to 39.

35. Regulation 2(1) (interpretation) has effect as if the following definitions were inserted at the appropriate places—

> ""the 1995 Directive" means Council Directive 95/18/EC dated 19th June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC dated 26th February 2001 and Directive 2004/49/EC dated 29th April 2004, both of the European Parliament and of the Council;";

""the 2012 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);";

""European licence" means a licence that is—

(a) valid throughout the territory of any EEA state,

(b) granted to a railway undertaking by which the capacity of the railway undertaking as such is recognised and which authorises the undertaking to provide in and between EEA states such train services as may be specified in the licence, and

(c) granted pursuant to any action taken by an EEA state for the purpose of implementing the 1995 Directive or the 2012 Directive;".

36. Regulation 5 (prohibition of unlicensed provision of services) has effect as if for paragraph (1) there were substituted—

"(1) Where a person is a railway undertaking to which these Regulations apply, that person may not provide a train service in Great Britain unless the person is authorised to do so—

(a) by a railway undertaking licence which is appropriate for that train service, or

(b) by a European licence which would be appropriate for that train service if the United Kingdom were an EEA state,

and any person who provides such a service without such a licence is guilty of an offence.".

37. Regulation 9(1) (prohibition on operating trains without a statement of national regulatory provisions) has effect as if after "railway undertaking licence" there were inserted "or a European licence (see regulation 5)".

38.—(1) Regulation 10 (statements of national regulatory provisions) has effect with the modifications in paragraphs (2) and (3).

(2) Paragraph (1) has effect as if after "railway undertaking licence" there were inserted "or European licence".

(3) Paragraph (2)(b) has effect as if after "the railway undertaking licence" there were inserted "or the European licence".

39. Regulation 11(1) (conditions of SNRPs) has effect as if after "railway undertaking licence" there were inserted "or a European licence (see regulation 5)".

40. The 2005 Regulations have effect as if the following regulation were inserted after regulation 14—

"Monitoring, suspension and revocation of SNRPs issued to holders of European licences

14A.—(1) This regulation applies where the ORR has issued an SNRP to a holder of a European licence under regulation 10.

(2) The ORR 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 2 as to good repute, financial fitness, professional competence and insurance cover for civil liabilities at any time the ORR considers that there is serious doubt whether the licence holder complies with any of those requirements, and in doing so, the ORR must treat Schedule 2 as if it applies in relation to holders of European licences.

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

Modifications to other legislation

41.—(1) For the period of 2 years beginning with exit day, any reference in, or application of, the provisions listed in paragraph (2) to a railway undertaking licence granted pursuant to the 2005 Regulations includes a reference to, or applies to, a relevant European licence, as the case may be.

(2) The provisions are—

(a) section 4 of the Railway Fires Act 1905;

(b) Schedule 2A to the Insolvency Act 1986;

(c) sections 6(1A), 72 and 80 of the Railways Act 1993;

(d) section 235(2) of the Greater London Authority Act 1999;

(e) Schedule 1 to the Civil Contingencies Act 2004;

(f) section 46 of the Railways Act 2005;

(g) Schedule 11 to the London Underground (East London Line Extension) (No. 2) Order 2001;

(h) Schedule 11 to the Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002;

(i) Schedule 13 to the Docklands Light Railway (Woolwich Arsenal Extension) Order 2004;

(j) article 2 of the British Transport Police (Police Services Agreement) Order 2004;

(k) regulation 6 of the Central Rating List (England) Regulations 2005.

(3) Any act or omission—

(a) in relation to, or in reliance on, a relevant European licence, and

(b) that, for the purposes of the provisions listed in paragraph (2), has effect immediately before exit day,

continues to have effect on and after exit day.

(4) For the purposes of this regulation—

"European licence" has the same meaning as in regulation 2(1) of the 2005 Regulations (as modified by regulation 35 of these Regulations);

"relevant European licence" means a European licence, the holder of which has a valid SNRP that has not been suspended or revoked;

"SNRP" has the same meaning as in the 2005 Regulations.

Signed by authority of the Secretary of State for Transport

Name
Parliamentary Under Secretary of State
Department for Transport

Date

We consent to the making of these Regulations

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) and 23 of, and paragraph 1 of Schedule 4 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (c), (d) and (g)) arising from the withdrawal of the UK from the European Union.

These Regulations make amendments to legislation relating to the licensing of railway undertakings in Great Britain. Part 2 amends the existing licensing legislation.

Parts 3 and 4 make consequential amendments to primary and secondary legislation. Part 4 (regulation 31) also revokes Regulation (EU) 2015/171 in Great Britain and Northern Ireland.

Part 5 makes transitional provision in respect of existing European licences granted by the Office of Rail and Road (established under section 15 of the Railways and Transport Safety Act 2003 (c. 20); section 15 was amended by the Office of Rail Regulation (Change of Name) Regulations (S.I. 2015/1682)) and pending applications for a licence so that they are treated as licences issued under the 2005 Regulations as amended by these Regulations.

Part 6 makes transitory provision so that European licences issued by an EEA Member State continue to be recognised in Great Britain for two years from exit day. The effect is that in respect of all existing legislation as it applies to these licences there is no change for two years.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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