EXPLANATORY MEMORANDUM TO

THE RAILWAY (LICENSING OF RAILWAY UNDERTAKINGS) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This statutory instrument corrects deficiencies in the Railway (Licensing of Railway Undertakings) Regulations 2005 (SI 2005/3050) ("2005 Regulations") arising from the UK's exit from the European Union. It will also revoke Regulation (EU) 2015/171 which will become redundant after exit day. It is being made to ensure that the 2005 Regulations continue to operate effectively in the event of the UK leaving the European Union without an agreed deal with the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 The 2005 Regulations established rules for the licensing of passenger and freight train operators in Great Britain. The 2005 Regulations:

- created a new criminal offence of providing a train service when not holding an appropriate European operator licence;
- designated the Office of Rail and Road ("the ORR") as the authority responsible for issuing licences in Great Britain;
- allowed the ORR to charge a reasonable fee for licence applications;
- introduced rules for the suspension and revocation of a licence; and
- required European licence holders to obtain a statement of national regulatory provisions (SNRP) from the ORR before providing train services. The purpose of the SNRP was to set out the conditions that the operator had to comply with when operating services.

2.3 The main effect of the 2005 Regulations was to create the "European licence". Any operator established in Great Britain could be granted a European licence, subject to the ORR being satisfied that the applicant met certain conditions regarding their professional competence, financial fitness and insurance cover. Once granted, the licence was valid for the holder to provide train services in any EEA Member State. This was within the context of a long term European programme to establish a "single European Railway Area" within which train operators would have equal access to infrastructure to promote competition, and be subject to common safety and operating rules. The 2005 Regulations implemented into domestic law the EU Directives that were introduced for this purpose (EU 95/18, as amended by EU 2001/13 and EU 2004/49). The 2005 Regulations were amended by SI 2016/645, which implemented EU Directive 2012/34/EU (the rail recast Directive).

2.4 Prior to 2005, the ORR issued licences under the Railways Act 1993 ("1993 Act"). Some train operators still hold these licences. The 1993 Act licensing regime is still in force and applies to train operators that provide services on networks that are physically separate from the national rail network (e.g. Merseyrail), and all station, network and light maintenance depot operators. This instrument does not affect licences issued under the 1993 Act. Since 2005, most passenger and freight train operator licences issued by the ORR have been European operator licences, issued under the 2005 Regulations. European licence holders also require a Statement of National Regulatory Provisions (SNRP) from the ORR, which – in practice - makes a European operator licence issued in Great Britain equivalent in its provisions to a licence issued under the 1993 Act.

2.5 Regulation (EU) 2015/171 applies to Great Britain and Northern Ireland. It established:

- the standard operator licence template;
- additional requirements for checking and demonstrating that train operators have adequate civil liability cover; and
- additional administrative procedures for granting a licence.

Why is it being changed?

2.6 After exit day the 2005 Regulations will not be able to operate effectively unless the references they contain to Europe and European Union institutions are corrected. Most of the deficiencies that need to be corrected are minor and technical. The most significant change is to rename the "European licence" – it will in future be known as the "railway undertaking licence". Other changes are mostly to remove references and obligations to provide information to European Union institutions, such as the European Railway Agency.

2.7 Regulation (EU) 2015/171 will become redundant after exit day either because the procedures it sets out have already been adopted into the UK licensing regime or because they will no longer be relevant after the UK leaves the EU (e.g. providing information to the European Commission). It is therefore being revoked.

What will it now do?

2.8 This instrument will enable the legal framework for train operator licensing in Great Britain provided for in the 2005 Regulations to continue after exit day. Operators that hold licences issued by the ORR will not need to take any action. Operator licences do not expire, so these licences will continue to be valid in GB indefinitely. However, ORR issued licences will no longer be valid in EEA Member States after exit day. Any operators who intend to operate in an EEA Member State would have to apply for a licence from a licensing authority in an EEA Member State. Operators that provide train services in Great Britain and hold a licence issued by an EEA Member State other than the ORR will not need to take any immediate action. The instrument provides for those licences to continue to be recognised in Great Britain for two years after exit day. At the end of that two-year period any affected operators will require a licence issued by the ORR to continue to operate legally in Great Britain (there is

currently only one such operator, Europorte Channel SAS, a freight operator). This position was set out in a rail technical notice[1] issued in October.

2.9 No other requirements of the licensing regime under the 2005 Regulations will be changed.

2.10 This instrument does not provide for the long-term, mutual recognition of operator licences issued by EEA-member states and held by cross-border service operators (e.g. services which operate through the Channel Tunnel). Mutual recognition of these licences is contingent on any future bilateral agreements with Member States. The UK Government is engaging with a range of European counterparts, including member states, to discuss cross-border services once the UK leaves the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments and the Sifting Committees

3.1 None.

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

3.2 The territorial application of this instrument varies between provisions (see Section 4 below).

4. Extent and Territorial Application

4.1 The territorial extent and application of this instrument is England and Wales and Scotland, except for the provision which revokes Regulation (EC) 2015/171, which extends and applies to England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1 The Minister for Rail, Andrew Jones, has made the following statement regarding Human Rights:

"In my view the provisions of the Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made in exercise of powers in sections 8 and 23 of, and paragraph 21 of Schedule 7 and paragraph 1 of Schedule 4 to the European Union (Withdrawal) Act 2018 ("EU Withdrawal Act"). The EU 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 which was made to implement the UK's obligations as a member of the EU. The EU Withdrawal Act also contains temporary power to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in retained EU law, to ensure that

[1] https://www.gov.uk/government/publications/rail-transport-if-theres-no-brexit-deal/rail-transport-if-theres-no-brexit-deal

the UK's legal system continues to function properly outside the EU. The EU Withdrawal Act does not preserve EU directives. Changes made under section 8 of the EU Withdrawal Act are therefore made to the relevant legislation which implements an EU directive in the UK.

7. Policy background

What is being done and why?

7.1 This instrument is intended to allow the status quo in operator licensing to continue with the bare minimum of change in the event of a 'no deal' EU exit. Without the changes provided for in the instrument, when the UK leaves the EU there would be uncertainty particularly for business, about the validity of European licences that have been issued by the ORR since 2005, and about the validity in Great Britain of licences issued by EEA States. This uncertainty could lead to legal challenge, possible disruption of services, and financial and reputational damage to the Government. In terms of foreseeable costs, without the instrument it is possible the ORR would have to validate current licences as a stop-gap measure. This would impose an administrative burden on the ORR. It would also impose administrative costs on train operators if the ORR needed to request supporting documentation and further information.

7.2 The most important effect of this instrument will be that a train operator licence issued in future under the 2005 Regulations will be known as a "railway undertaking licence" rather than, as now, "European licence". Any application to the ORR for a European licence still pending on exit day will be granted under this instrument as a railway undertaking licence and will be valid only in Great Britain.

7.3 The current requirement in the 2005 Regulations for all train operator to be established in Great Britain will be removed. This instrument will recognise all current EEA-issued European licences for a maximum of two years after exit day. After this date, any train operating company operating in Great Britain will need to apply to the ORR for a railway undertaking licence. This approach to recognition has been adopted to balance the need to take back control of the UK's regulatory frameworks post-exit with the need provide certainty to affected businesses and ensure appropriate continuity.

7.4 This instrument does not provide for the long-term, mutual recognition of operator licences issued by EEA-Member States and held by cross-border services. Mutual recognition of these licences will be contingent on any future bilateral agreements with Member States. In the event it is not possible to secure appropriate bilateral arrangements before exit day, the two-year recognition period in this instrument would enable affected operators to continue to operate in Great Britain on the basis of their existing licences. To operate in Europe, however, any operator based wholly in Great Britain would need to re-establish in an EEA Member State in order to obtain a European licence.

7.5 Therefore, in the two years after exit day, there will be three types of valid licence in Great Britain:

i) European licences issued by an EEA Member State, issued before exit day;

ii) ORR-issued licences under the Railways Act 1993; and

iii) ORR-issued licences under the 2005 Regulations. Existing "European licences" and all new licences issued under the Regulations will become known as "railway undertaking licences".

Beyond 2021, the only types of licence that will be valid in Great Britain will be ii) and iii).

7.6 The instrument will make minor consequential amendments to six pieces of primary legislation and five pieces of secondary legislation to track through the changes made to the 2005 Regulations. The primary legislation is: The Railway Fires Act 1905; The Insolvency Act 1986; The Railways Act 1993; The Greater London Authority Act 1999; The Civil Contingencies Act 2004; and The Railways Act 2005. The secondary legislation is: The London Underground (East London Line Extension) (No. 2) Order 2001; The Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002; The Docklands Light Railway (Woolwich Arsenal Extension) Order 2004; The British Transport Police (Police Services Agreement) Order 2004; and Central Rating List (England) Regulations 2005.

7.7 The instrument intentionally does not make the necessary consequential amendments to the Town and Country Planning (Control of Advertisements) Regulations 1992 and the Central Rating List (Wales) Regulations 2005, which were both amended by the Railway (Licensing of Railway Undertakings) Regulations 2005. The necessary amendments to these Regulations are expected to be made in parallel by the Welsh Ministers.

7.8 In the absence of a Northern Ireland Executive, the UK Government has decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary Northern Ireland secondary legislation at Westminster, in close consultation with the Northern Ireland departments. As rail operator licensing is a devolved matter in Northern Ireland, this will be covered in a separate instrument. The Railways (Amendment) (EU Exit) Regulations (Northern Ireland) 2019, which have been prepared in consultation with the Northern Ireland Civil Service, have therefore separately been laid in draft for sifting under paragraph 3(3) of Schedule 7 to the EU Withdrawal Act.

7.9 The Northern Ireland Civil Service was consulted on, and supports, the revocation of Regulation (EU) 2015/171 on UK-wide basis via this instrument.

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 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. The instrument is also made under Section 23(1) of, paragraph 21 of Schedule 7 and paragraph 1 of Schedule 4 to EU Withdrawal Act. In accordance with the requirements of EU Withdrawal Act the Minister has made the relevant statements as detailed in the **Annex** to this memorandum.

9. Consolidation

9.1 There are no plans to consolidate this legislation.

10. Consultation outcome

10.1 The Department conducted a public consultation[2] from 24th April 2018 to 8th June 2018. Stakeholders from within the rail sector were also consulted informally prior to the publication of the consultation.

10.2 Part 1 of the consultation sought views and opinions on implementing the Market Pillar Directive of the Fourth Railway package (Directive 2016/2370) in the UK, which was required to be implemented before exit day (and which has since been implemented by the Railways (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations 2019). The Market Pillar Directive introduces new rules on the independence and impartiality of infrastructure requirements, it states the principle of open access and improves competition on the railways. Part 2 of the consultation asked stakeholders for their views on the amendments we would need to make to our EU rail markets legislation to ensure it continued to function effectively should the UK leave the EU without a withdrawal agreement. The Consultation set out the Department's proposed approach to making these amendments via three rail markets EU Exit SIs:

- An SI to make corrections to EU Regulation 1370/2007;
- An SI to make corrections to the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, the Regulations that would implement the Market Pillar Directive and a number of directly applicable EU Implementing Regulations, and
- An SI to amend the Railway (Licensing of Railway Undertakings) Regulations 2005 – (this instrument).

10.3 In addition to the consultation, Department for Transport officials held regular meetings with colleagues from the Scottish and Welsh Government 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.

10.4 Five responses were received to Part 2 of the consultation. Responses did not highlight any specific issues but did highlight the difficulty in identifying impacts on our EU rail markets legislation as a result of leaving the EU without further information on wider impacts of the UK leaving the EU.

10.5 To complement the consultation and to ensure that we identified all the issues for our EU rail markets legislation that could arise from our exit from the EU, the Department 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 enabled the Department to test our thinking and share proposed amendments to our EU rail markets legislation.

10.6 Since the consultation, we have shared a draft of this instrument with key stakeholders including colleagues from the Scottish and Welsh Government and officials from the Northern Ireland Executive. We have also shared a draft of the instrument with rail industry representatives.

[2] https://www.gov.uk/government/consultations/rail-markets-implementing-the-market-pillar

10.7 The Department has worked closely with the ORR in developing this instrument, recognising ORR's status and expertise as the licensing authority. It has also informally consulted the Rail Delivery Group (RDG, an industry body representing rail passenger and freight operators, Network Rail and HS2) about the Department's proposed policy approach.

10.8 The ORR suggested using the instrument to revoke the 2005 Regulations and have all new licences issued under the Railways Act 1993. The Department informally consulted on this proposal with the RDG. RDG preferred whichever approach would minimise administrative costs and disruption, both for the Department and RDG's members. The Department considers that the least costly and disruptive approach is to correct, rather than revoke the 2005 regulations, for the following reasons:

- The original publicly stated policy intention was that the 2005 Regulations would be corrected and retained, not revoked.
- No formal consultation has taken place on the possible revocation of the 2005 Regulations, and there was insufficient time to undertake and act upon consultation before exit day.
- In the absence of consultation with stakeholders who would be affected, revoking the 2005 Regulations would be likely to create uncertainty and confusion ahead of exit day, and deliver no tangible benefit.
- There would be no material dis-benefit to maintaining the status quo (by making the minimum changes required to correct deficiencies in the existing Regulations).
- Retaining the 2005 Regulations now would not prevent them from being replaced in the future.

10.9 The RDG has expressed support for the two-year recognition period after exit day for European licences issued by EEA Member States.

10.10 The devolved administrations have been made aware of the Department's intention to preserve the current licensing regime with as few changes as possible. Northern Ireland was consulted on, and supports, the revocation of Regulation (EU) 2015/171. The Welsh Government were consulted with respect to certain specific issues. The outcome of this consultation is detail in paragraph 7.7 above.

10.11 The Government response to the consultation was published on 21 January 2019 and can be found at the following link: https://www.gov.uk/government/consultations/rail-markets-implementing-the-market-pillar or obtained from either of the contacts set out in paragraph 15.1.

11. Guidance

11.1 The Department is not producing guidance on the amendments provided for in this instrument as they are minor and technical in nature. The Department issued a Technical Notice (12 October 2018) explaining the changes that are being made to the 2005 Regulations to prepare for exiting the EU so that existing and prospective operators are aware of the impact. The ORR publishes information about how to apply for a licence on its website and will work with applicants so that they understand the requirements.

12. Impact

12.1 The impact on business, charities or voluntary bodies in respect of the changes to the 2005 Regulations are limited to minor familiarisation costs.

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, the Department for Transport is satisfied that the impact will be limited to the extent that the overall costs or benefits to business will be below £5 million per year.

13. Regulating small business

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

14. Monitoring and review

14.1 The approach to monitoring of this legislation is for it to be monitored in the course of normal departmental business. This instrument amends the Railway (Licensing of Railway Undertakings) Regulations 2005. As this instrument is made under the EU Withdrawal Act, no review clause is required.

15. Contact

15.1 Denise Rose telephone: 07769 234 603 or email: denise.rose@dft.gov.uk or Peter Lovitt telephone 07970 312 085 or email peter.lovitt@dft.gov.uk at the Department for Transport, can be contacted with any queries regarding the instrument.

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 Andrew Jones MP, Parliamentary Under-Secretary of State for Transport at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

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

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EU Withdrawal Act 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. Appropriateness statement

1.1 The Minister for Rail, Andrew Jones, M.P. Parliamentary Under Secretary of State, Department for Transport, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 The instrument makes the minimum adjustments to the Railway (Licensing of Railway Undertakings) Regulations 2005 that are required to correct inoperabilities in EU legislation in order to maintain the status quo in respect of train operator licensing in Great Britain after exit day.

2. Good reasons

2.1 The Minister for Rail, Andrew Jones, M.P. Parliamentary Under Secretary of State, Department 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 the licensing of train operators in Great Britain continues with a minimum of disruption in the event of the UK leaving the EU without an agreed deal with the European Union
- Great Britain has in place the legislative framework to retain its control of the GB train operator licensing regime after the UK leaves the EU
- there is no unreasonable risk of train operators committing a criminal offence by operating in Great Britain without a valid licence after exit day. The penalty for committing an offence is, on summary conviction, a fine not exceeding the statutory maximum or, on conviction on indictment, a fine. A Justice Impact Test has been completed for this instrument which assesses that the likelihood of an offence occurring as a consequence of the changes to the 2005 Regulations is zero.

3. Equalities

3.1 The Minister for Rail, Andrew Jones, M.P. Parliamentary Under Secretary of State, Department for Transport, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

3.2 The Minister for Rail, Andrew Jones, M.P. Parliamentary Under Secretary of State, 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."

4. Criminal offences

4.1 The Minister for Rail, Andrew Jones, M.P. Parliamentary Under Secretary of State, Department 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:

- The instrument makes minimal technical amendments to correct inoperabilities in the Railway (Licensing of Railway Undertakings) Regulations 2005 as a consequence of exiting the EU. It is an offence under the 2005 Regulations for a train operator to provide services on the railway in Great Britain without a European licence issued in an EEA Member State. The penalty for committing an offence is, on summary conviction, a fine not exceeding the statutory maximum; on conviction on indictment, a fine.
- The correction of inoperabilities to reflect the UK's exit from the EU have the effect of extending the offence by placing the requirement for holding a licence issued by the ORR before operating train services in Great Britain on a wider group of operators (i.e. after a two year transitional period those who would previously have been exempt by virtue of holding an EEA equivalent licence).
- There has never to date been an instance of an operator operating on the railway in Great Britain without a valid licence. I do not consider that extending the offence will make it more likely that such an offence will occur in future."

5. Delegated powers

5.1 The Minister for Rail, Andrew Jones, Department 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:

- The instrument makes minimal technical amendments to correct inoperabilities in the Railway (Licensing of Railway Undertakings) Regulations 2005 as a consequence of exiting the EU. The 2005 Regulations give the licensing authority (the Office of Rail and Road (ORR)) the power to charge a reasonable fee for applications for a railway undertaking licence. The

fee charged by the ORR is currently £250. The instrument will not change this fee and the ORR has no current plans to change the fee."

6. Explanations

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