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

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

EXITING THE EUROPEAN UNION

TRANSPORT

The Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019

Made - - - - 2019

Coming into force in accordance with regulation 1

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

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day, or, if they are made on or after exit day, on the day after the day on which they are made.

(3) Part 2 of these Regulations extends to England and Wales and Scotland only.

(**a**) 2018 c.16.

PART 2

Amendment of subordinate legislation

Amendment of the Train Driving Licences and Certificates Regulations 2010

2.—(1) The Train Driving Licences and Certificates Regulations 2010(**a**) are amended as follows.

(2) In regulation 2—

(a) omit the definition of "the Agency";

(b) for the definition of "the Department for Regional Development" substitute—

""the Department for Infrastructure" means the Department renamed as such by the Departments Act (Northern Ireland) 2016(**b**) and originally established as the Department for Regional Development by article 3(1) of the Departments (Northern Ireland) Order 1999(**c**)";

(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(**d**) 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 before exit day 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;";

(e) after the definition of "mainline railway" insert the following definitions—

""Northern Ireland train driving licence" means a licence issued by the Department for Infrastructure under the Northern Ireland Regulations indicating that the holder satisfies medical, educational and professional skills for train driving;

"the Northern Ireland Regulations" means the Train Driving Licences and Certificates Regulations (Northern Ireland) 2010(**e**);";

(f) 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);(**f**)";

(g) for the definition of "safety authority", substitute—

""safety authority" means an authority established in an EEA state, other than the Intergovernmental Commission, 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

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(**a**) S.I. 2010/724, amended by S.I. 2013/950, 2015/1798.
(**b**) 2016 c.5 (N.I.).
(**c**) S.I. 1999/283 (N.I. 1).
(**d**) O.J. No. L315, 3.12.2007, p.51, as 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).
(**e**) S.R. 2010 No. 132, amended by S.R. 2013 No. 126, S.R. 2016 No. 73.
(**f**) O.J. No. L138, 26.5.2016, p.102.

the levying of charges for the use of railway infrastructure and safety certification(**a**) or article 16(1) of the Recast Safety Directive;";

(h) 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;";

(i) for the definition of "train driving licence" substitute—

""train driving licence" means a licence issued by or on behalf of the ORR under these Regulations indicating that the holder satisfies medical, educational and professional skills requirements for train driving;";

(j) after that definition, insert—

""transitional period" means the period commencing on exit day and expiring at the end of two years.".

(3) In regulation 4—

(a) for paragraph (1), substitute—

"(1) Subject to paragraph (12), a railway undertaking or infrastructure manager must not deploy a person to drive a train unless that person is authorised to do so—

(a) by a train driving licence;

(b) by a Northern Ireland train driving licence; or

(c) during the transitional period only, by a European train driving licence.";

(b) for paragraph (4), substitute—

"(4) Subject to paragraphs (7) and (12) a person must not drive a train unless that person is authorised to do so by—

(a) a train driving licence, a Northern Ireland train driving licence, or, during the transitional period only, a European train driving licence; and

(b) a train driving certificate for the type of train driven and the infrastructure driven on, issued by the railway undertaking or infrastructure manager by whom that person is deployed to drive a train.";

(c) after paragraph (4), insert—

"(4A) For the purposes of paragraphs (5) (6) (8) (12) and (13) a train driving licence includes a Northern Ireland train driving licence and, during the transitional period only, a European train driving licence.";

(d) omit paragraph (9);

(e) in paragraph (11), for "A train driving licence issued otherwise than by the ORR" substitute "A Northern Ireland train driving licence or, during the transitional period, a European train driving licence issued"

(f) omit paragraph (14).

(4) In regulation 5(1), substitute—

"(1) The form of a train driving licence and a train driving certificate issued under these Regulations must comply with the requirements set out in Schedule 2.".

(5) After regulation 9(1), insert—

(**a**) 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/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).

"(1A) In paragraph (1) a train driving licence includes a Northern Ireland train driving licence and, during the transitional period only, a European train driving licence.".

(6) After regulation 13(1), insert—

"(1A) In paragraph (1) a train driving licence includes a Northern Ireland train driving licence and, during the transitional period only, a European train driving licence.".

(7) After regulation 17(5), insert—

"(6) For the purposes of paragraphs (2) and (4) a train driving licence includes a Northern Ireland train driving licence and, during the transitional period only, a European train driving licence.".

(8) In regulation 18—

(a) in paragraph (1), omit "issued by the ORR";

(b) in paragraph (3)—

(i) omit "a safety authority," and "the safety authority," and,

(ii) for "the Department for Regional Development", in both places, substitute "the Department for Infrastructure".

(9) For regulation 19, substitute—

"Suspension or withdrawal of other train driving licences and driver prohibition

19.—(1) Without prejudice to regulation 21, if the ORR considers that the holder of a Northern Ireland train driving licence no longer satisfies a condition required for the holding of it the ORR must—

(a) inform the Department for Infrastructure of this view;

(b) give the Department for Infrastructure 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 Intergovernmental Commission of the request.

(2) Without prejudice to regulation 21, if, during the transitional period, the ORR considers that the holder of a European train driving licence no longer satisfies a condition required for the holding of it the ORR—

(a) must—

(i) inform the Department for Infrastructure and the Intergovernmental Commission, and

(ii) notify the Department for Infrastructure and the Intergovernmental Commission about any request made under (b)(ii);

(b) may—

(i) inform the safety authority of this view,

(ii) 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

(iii) notify the other safety authorities of the request.

(3) Pending any suspension or withdrawal of the licence, or other conclusion on the request, the ORR may prohibit the holder from driving a train in Great Britain.".

(10) For regulation 20(5), substitute—

"(5) If the ORR exercises the power in paragraph (4) it must inform the Department for Infrastructure and the Intergovernmental Commission, and may inform the safety authorities.".

(11) For regulation 21(3), substitute—

"(3) If the ORR takes any action under this regulation it must inform the Department for Infrastructure and the Intergovernmental Commission and may inform the safety authorities.".

(12) Omit regulation 22.

(13) In regulation 23—

(a) in paragraph (3), for "paragraphs (4) and (5)" substitute "paragraph (5)";

(b) omit paragraph (4).

(14) In regulation 24(1), omit the words "issued by it or on its behalf"

(15) For regulation 26, substitute—

"Information relating to the status of licences

26.—(1) The ORR must, upon request, provide information on the status of train driving licences to the Department for Infrastructure, the Intergovernmental Commission or any employer of train drivers.

(2) The ORR may provide the information mentioned in paragraph (1) to a safety authority.".

(16) For regulation 27, substitute—

"Information relating to certificates etc

27.—(1) Railway undertakings and infrastructure managers must, upon request, provide to the ORR any information relating to train driving certificates issued by them or any other functions carried out by them under these Regulations.

(2) Railway undertakings and infrastructure managers may provide the information mentioned in paragraph (1) to a safety authority.".

(17) For regulation 28, substitute—

"**Information relating to international train services**

28.—(1) Railway undertakings and infrastructure managers must upon request, provide to the ORR, the Department for Infrastructure and the Intergovernmental Commission information on the content of train driving certificates issued by them in relation to train drivers on international journeys.

(2) Railway undertakings and infrastructure managers may provide the information mentioned in paragraph (1) to a safety authority.".

(18) In regulation 30—

(a) in paragraph (1), omit ", or a trainer accredited or recognised to act as a trainer in another Member State in accordance with the requirements of article 20 of the Directive";

(b) after paragraph (1) insert—

"(1A) For the purposes of this regulation, during the transitional period, 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.".

(19) For regulation 31(3)(b), substitute—

"(b) during the transitional period, an examiner accredited or recognised to act as an examiner in a member State in accordance with the requirements of article 20 of the Directive.";

(20) In regulation 39(1)(a), in both places, for "one other Member State", substitute "one member State".

(21) In Schedule 2—

(a) in the heading, omit the words "Community" and "Harmonised";

(b) in paragraph 2(a), omit the words "in English";

(c) in paragraph 2, omit sub-paragraphs (c), (e) and (f).

PART 3

Amendment of retained direct EU legislation

Amendment of Commission Decision 2010/17/EC

3.—(1) The Commission Decision of 29 October 2009 on the adoption of basic parameters for registers of train driving licences and complementary certificates provided for under Directive 2007/59/EC of the European Parliament and of the Council (Decision 2010/17/EC) is amended as follows.

(2) In Articles 1 and 2, for the words "are adopted" substitute "apply".

(3) After Article 2, insert—

"Article 2A

For the purposes of this Decision–

(a) "accident investigation body" means an investigating body established in an EEA state in accordance with article 21 of Directive 2004/49/EC of the European Parliament and of the Council on safety on the Community's railways and amending Council Directive 95/18 on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification(**a**) or in accordance with article 22 of Directive (EU) 2016/798 of the European Parliament and of the Council on railway safety(**b**)

(b) "complementary certificate" means a train driving certificate issued under the Regulations or the NI Regulations;

(c) "the Department" means the Department for Infrastructure renamed as such by the Departments Act (Northern Ireland) 2016 and originally established as the Department for Regional Development by article 3(1) of the Departments (Northern Ireland) Order 1999;

(d) "the Intergovernmental Commission" has the same meaning as in the Regulations;

(e) "infrastructure manager" has, in relation to Great Britain, the same meaning as in the Regulations and, in relation to Northern Ireland, the same meaning as in the NI Regulations;

(f) "the NI Regulations" means the Train Driving Licences and Certificates Regulations (Northern Ireland) 2010;

(g) "the ORR" means the Office of Rail and Road(**c**);

(h) "railway undertaking" has, in relation to Great Britain, the same meaning as in the Regulations and, in relation to Northern Ireland, the same meaning as in the NI Regulations;

(i) "the Regulations" means the Train Driving Licences and Certificates Regulations 2010;

(j) "safety authority" has the same meaning as in the Regulations;".

(4) Omit Articles 3, 4 and 5.

(**a**) O.J. No. L164, 30.4.2004, p 44 to which there are amendments not relevant to these Regulations.

(**b**) O.J. No. L138, 26.5.2016, p 102.

(**c**) The Office of Rail and Road was established by section 15 of the Railways and Transport Safety Act 2003 (c.20). Section 15 was amended by S.I. 2015/1682, Schedule, Part 1, paragraph 2(b).

(5) In Annex I—

(a) in Chapter 1 (basic parameters), for "set in accordance with Article 22(4) of Directive 2007/59/EC", substitute "kept under regulation 24 of the Regulations or regulation 22 of the NI Regulations, as the case may be";

(b) in Chapter 2 (data to be collected), for the third paragraph, substitute—

"Section 2 shall contain information about the licence issued in line with the list of requirements in Schedule 2 to the Regulations or Schedule 2 to the NI Regulations, as the case may be.";

(c) in Chapter 3 (data format)—

(i) in the table in Section 1 (current state of the licence), at point 1.1, in the third column, for "EIN (12 digits)" substitute "Number in digits",

(ii) in the heading to Section 2 (information on the current licence issued, in accordance with Annex I, Section 2 of Directive 2007/59/EC), omit the words "issued, in accordance with Annex I, Section 2 of Directive 2007/59/EC",

(iii) in the table in Section 2 (information on the current licence issued, in accordance with Annex I, Section 2 of Directive 2007/59/EC), at point 9.1 in the second column, for "competent authority" substitute "the ORR, the Department",

(iv) in the table in Section 2 (information on the current licence issued, in accordance with Annex I, Section 2 of Directive 2007/59/EC), at point 14.1, in the first row, for the words in the second column, substitute "Information imposed by the ORR in accordance with Schedule 2 to the Regulations or by the Department in accordance with Schedule 2 to the NI Regulations, as the case may be",

(v) in the table in Section 2 (information on the current licence issued, in accordance with Annex I, Section 2 of Directive 2007/59/EC), at point 14.1, in the third row, in the second column, for "entries by the Member State which issues the licence, for information that may be necessary under national legislation", substitute "additional information that may be considered necessary by the ORR or the Department, as the case may be",

(vi) in the table in Section 2 (information on the current licence issued, in accordance with Annex I, Section 2 of Directive 2007/59/EC), at point 15.1, in the first row, for the words in the second column, substitute "Information imposed by the ORR in accordance with Schedule 1 to the Regulations, or by the Department in accordance with Schedule 1 to the NI Regulations, as the case may be",

(vii) in the table in Section 4 (information on the basic requirements for issuing a licence and results of periodic checks), at point 26.1, in the third column, for the words from "criteria" to the end, substitute "in paragraphs 1(1), 1(2), 1(3) and 2(1) of Schedule 1 to the Regulations or paragraphs 1(1), 1(2), 1(3) and 2(1) of Schedule 1 to the NI Regulations, as the case may be",

(viii) in the table in Section 4 (information on the basic requirements for issuing a licence and results of periodic checks), at point 27.1, in the third column, for the words from "criteria" to the end, substitute "in paragraph 2(2) of Schedule 1 to the Regulations or paragraph 2(2) of Schedule 1 to the NI Regulations, as the case may be",

(ix) in the table in Section 4 (information on the basic requirements for issuing a licence and results of periodic checks), at point 28.1, in the third column, for the words from "criteria" to the end substitute "in Schedule 3 to the Regulations or Schedule 3 to the NI Regulations, as the case may be";

(d) in Chapter 4 (access rights)—

(i) omit the first indent,

(ii) omit the second indent (including its two sub-indents),

(iii) in the third and fourth indents, for "article 22(1)(b) of Directive 2007/59/EC", substitute "regulation 26 of the Regulations, or regulation 25 of the NI Regulations as the case may be",

(iv) for the words of the sixth indent, substitute "to the Rail Accident Investigation Branch for investigating accidents in accordance with the Railways and Transport Safety Act 2003(**a**)".

(e) for Chapter 5 (data exchange) substitute—

"5. Data exchange

Where in accordance with Chapter 4 (access rights), access to relevant data is required to be granted, it must be granted to persons having a right of access under that Chapter, upon request and without delay, in a manner which ensures secure transmission of information and protection of personal data.

In addition to the access rights granted under Chapter 4, each of the ORR and the Department may, at its discretion, grant access to information contained within the NLR to each other, the Intergovernmental Commission, a safety authority or an accident investigation body. Where such access is granted it must be in a manner which ensures secure transmission of information and protection of personal data.

The ORR and the Department may offer login facilities on their websites to all who have access, provided they ensure that grounds for requests are checked.".

(6) In Annex II—

(a) in Chapter 1 (basic parameters), for "set in accordance with Article 22(4) of Directive 2007/59/EC" substitute, "kept under regulation 25 of the Regulations or regulation 23 of the NI Regulations as the case may be";

(b) in Chapter 2 (data to be collected)—

(i) for the third paragraph, substitute—

"Section 2 shall contain information about the complementary certificate issued in line with the list of requirements in paragraph 3(a) to (n) of Schedule 2 to the Regulations or paragraph 3(a) to (q) of Schedule 2 to the NI Regulations as the case may be.",

(ii) in the final paragraph, for "the relevant part of Directive 2007/59/EC", substitute "the relevant part of the Regulations or the NI Regulations, as the case may be";

(c) in Chapter 3 (data format)—

(i) in the table in Section 1 (reference to the licence), at point 1.1, in the third column, for "EIN (12 digits)", substitute "Numbers in digits",

(ii) in the heading of Section 2 (information about the current complementary certificate issued, as listed in Annex I, Section 3 of Directive 2007/59/EC), for "as listed in Annex I, Section 3 of Directive 2007/59/EC", substitute "as listed in paragraph 3 of Schedule 2 to the Regulations or paragraph 3 of Schedule 2 to the NI Regulations, as the case may be",

(iii) in the table in Section 2 (information about the current complementary certificate issued, as listed in Annex I, Section 3 of Directive 2007/59/EC), at point 8.1, in the second column, for "in Article 15 of Directive 2007/59/EC", substitute "in regulation 11 of the Regulations or regulation 11 of the NI Regulations, as the case may be",

(iv) in the table in Section 4 (historical records in connection with the basic requirements for issuing a complementary certificate and the results of periodic checks), at point 29.1, in the third column, for "in Annex VI(8) of Directive 2007/59/EC", substitute "in paragraph 8 of Schedule 4 to the Regulations or in paragraph 8 of Schedule 4 of the NI Regulations, as the case may be",

(v) in the table in Section 4 (historical records in connection with the basic requirements for issuing a complementary certificate and the results of periodic checks), at point 30.1, in the third column, for "in Annex V of Directive 2007/59/EC", substitute "in

(**a**) 2003 c. 20. In accordance with section 3(3) of the 2003 Act, the Rail Accident Investigation Branch means those inspectors appointed by the Secretary of State under section 3 of that Act.

Schedule 5 to the Regulations or Schedule 5 to the NI Regulations, as the case may be";

(d) in Chapter 4 (access rights), in the first paragraph—

(i) for the words of the first indent, substitute "to the ORR for the purposes of regulations 27 or 28 of the Regulations, or to the Department for the purposes of regulations 26 or 27 of the NI Regulations, as the case may be,",

(ii) omit the second indent,

(iii) for the words of the third indent, substitute "to train drivers, upon request, for consulting the data concerning them,",

(iv) for the words of the fourth indent, substitute "to the Rail Accident Investigation Branch for investigating accidents in accordance with the Railways and Transport Safety Act 2003,";

(e) for Chapter 5 (data exchange) substitute—

"5. Data exchange

Where, in accordance with Chapter 4 (Access rights), access to relevant data is required to be granted, it must be granted to the persons having a right of access under that Chapter, upon request and without delay, in a manner which ensures secure transmission of information and protection of personal data.

Railway undertakings and infrastructure managers may offer login facilities on their websites to all who have access, provided they ensure that the grounds for requests are checked.";

(f) in Chapter 7 (procedure in case of bankruptcy), for "competent authority in the Member State where the railway undertaking or infrastructure manager is established", substitute "ORR or the Department, as the case may be, according to where the railway undertaking or infrastructure manager is established,".

Amendments to Commission Regulation (EU) No 36/2010

4.—(1) Commission Regulation (EU) No 36/2010 on Community models for train driving licences, complementary certificates, certified copies of complementary certificates and application forms for train driving licences under Directive 2007/59/EC of the European Parliament and the Council is amended as follows.

(2) For Article 1 substitute—

"*Article 1*

Model for train driving licences

The model as set out in Annex I to this Regulation must be used for train driving licences. This format must be used when a train driving licence is issued, renewed, updated or revoked.

The language used must be English.".

(3) After Article 1 insert—

"*Article 1A*

Definitions

For the purposes of this Regulation:

(a) "complementary certificate" means a train driving certificate issued under the Regulations or the NI Regulations;

(b) "delegated body" means a person to whom functions have been delegated by the ORR under regulation 34 of the Regulations or by the Department under regulation 20 of the NI Regulations;

(c) "Data Protection Legislation" means Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) and the Data Protection Act 2018(**a**);

(d) "Department" means the Department for Infrastructure renamed as such by the Departments Act (Northern Ireland) 2016 and originally established as the Department for Regional Development by article 3(1) of the Departments (Northern Ireland) Order 1999;

(e) "NI Regulations" means the Train Driving Licences and Certificates Regulations (Northern Ireland) 2010;

(f) "ORR" means the Office of Rail and Road;

(g) "Regulations" means the Train Driving Licences and Certificates Regulations 2010;

(h) "train driving licence" means a train driving licence or a Northern Ireland train driving licence as both such terms are defined in the Regulations.".

(4) For Article 2 substitute—

"*Article 2*

Model for complementary certificates

The model as set out in Annex II to this Regulation must be used for complementary certificates.

This format must be used when a complementary certificate is issued, renewed, updated, amended or revoked.

The language used must be English.".

(5) For Article 3 substitute–

"*Article 3*

Model for certified copies of complementary certificates

The model set out in Annex III to this Regulation must be used for certified copies of complementary certificates issued in accordance with regulation 16(4) of the Regulations or regulation 16(3) of the NI Regulations, as the case may be.".

(6) In Article 4—

(a) omit "Community" each time it occurs;

(b) in paragraph 1—

(i) for "application forms referred to in Article 14 of Directive 2007/59/EC" substitute "applications referred to in regulation 10 of the Regulations or regulation 10 of the NI Regulations",

(ii) omit "national";

(c) for paragraph 4 substitute—

"4. The ORR and the Department may transfer the lay-out of the model of the application form into the procedures published by each of them under regulation 10 of the Regulations or regulation 10 of the NI Regulations.".

(7) After Article 5 omit the words from "This Regulation shall be binding" to the end of the sentence.

(8) In the heading to Annex I omit "Community".

(9) In Annex I—

(**a**) 2018 c. 12.

(a) in Section 1 (physical characteristics of the train driving licence)—

(i) in the second paragraph, for "Member States may, for national use only,", substitute "the ORR and the Department may",

(ii) in the fourth paragraph, omit "Community";

(b) in Section 2 (anti-forgery measures)—

(i) in the first sentence following point (b), for "competent authorities", substitute "ORR and the Department",

(ii) in the second sentence following point (b), for "Annex III(2)(j) to Directive 2004/94/EC" substitute "regulations 5(1)(c) and 6(1)(b) of and paragraph 2(k) of Schedule 1 to the Railways and Other Guided Transport Systems (Safety) Regulations 2006(a)and regulation 4(1)(c) of and paragraph 2(k) of Schedule 1 to the Railways (Safety Management) Regulations (Northern Ireland) 2006(b).";

(c) in Section 3 (lay-out of the train driving licence)—

(i) omit the first and second paragraphs,

(ii) in the fourth paragraph—

(aa) in point (a), for "the language or languages of the Member States issuing the licence", substitute "English",

(bb) omit point (b),

(cc) for point (c), substitute—

"(c) the distinguishing sign of the United Kingdom, based on ISO 3166 alpha-2 code, being "UK", printed in negative.",

(dd) in point (d), at field 5 omit from "is based on the European Identification Number (EIN) as stated in Commission Regulation (EC) No 653/2007" to the end,

(ee) in point (d), at field 9, for "a competent authority", substitute "the ORR or the Department, as the case may be.",

(ff) in point (d), at field 9a.1, omit ", according to the classification in use in the Member State",

(gg) in point (d), at field 9a.2 for "entries by the Member State which issues the licence, for necessary information according to national legislation", substitute "additional information that may be considered necessary by the ORR or the Department, as the case may be.",

(hh) in point (d), at field 9b, omit "harmonised community",

(ii) in point (d), after field 9b, omit "In addition, the word 'European Communities Model' in the language" to end of Section 3;

(d) in Section 4 (status and numbering of the train driving licence)—

(i) in the first paragraph, for "competent authority or the delegated body", substitute "ORR, the Department or a delegated body, (as the case may be)",

(ii) in the fourth and fifth paragraphs, for "Article 14(1) of Directive 2007/59/EC", substitute "regulation 10 of the Regulations or regulation 10 of the NI Regulations, as the case may be",

(iii) in the fifth paragraph, for "competent authority", substitute "ORR or the Department, as the case may be";

(e) omit Section 6.

(10) In Annex II—

(**a**) S.I. 2006/599, to which there are amendments not relevant to these Regulations.
(**b**) S.R. 2006 No. 237, to which there are amendments not relevant to these Regulations.

(a) in the heading omit "Community";

(b) in Section 1 (content)—

(i) in the first paragraph, omit "in accordance with Article 29 of Directive 2009/57/EC",

(ii) omit the second paragraph,

(iii) in the third paragraph–

(aa) in the second indent for "Member States", substitute "This",

(bb) in the third indent, for "Member States", substitute "This" and for "that they recognise", substitute "recognised",

(cc) in fifth indent, for the words "Article 15", substitute "regulation 11 of the Regulations or regulation 11 of the NI Regulations, as the case may be",

(dd) in the sixth indent, for the words "Article 15 of Directive 2007/59/EC, substitute "regulation 11 of the Regulations or regulation 11 of the NI Regulations, as the case may be",

(iv) at point 1.3, in the last sentence, for "Annex V and VI to Directive 2007/59/EC", substitute "Schedules 4 and 5 to the Regulations or Schedules 4 and 5 to the NI Regulations, as the case may be",

(v) at point 1.4, omit "national",

(vi) at point 1.5, for "Annex VI to Directive 2007/59/EC", substitute "Schedule 4 to the Regulations or Schedule 4 to the NI Regulations, as the case may be",

(vii) at point 1.7, for "Annex V to Directive 2007/59/EC" substitute "Schedule 5 to the Regulations or Schedule 5 to the NI Regulations, as the case may be",

(viii) at point 1.8, for "Annex VI points (1) to (7) to Directive 2007/59/EC", substitute "paragraphs 1 to 7 of Schedule 4 to the Regulations or paragraphs 1 to 7 of Schedule 4 to the NI Regulations, as the case may be";

(c) in Section 2 (physical characteristics of the complementary certificate)—

(i) in the first sentence, omit "Community";

(ii) omit the final sentence;

(d) in Section 3 (anti-forgery measures)—

(i) in the third paragraph, for "Article 18(1) of Directive 2007/59/EC", substitute "regulation 17(1) of the Regulations or regulation 17(1) of the NI Regulations, as the case may be",

(ii) in the fourth paragraph, for "Article 15 of Directive 2007/59/EC", substitute "regulation 11 of the Regulations or regulation 11 of the NI Regulations, as the case may be";

(e) omit Section 4.

(11) In the heading to Annex III, omit "Community".

(12) In Annex III—

(a) in Section 1 (certified copy of complementary certificate)—

(i) in the first paragraph, omit the second sentence,

(ii) in the second paragraph, for "Article 15 of Directive 2007/59/EC", substitute "regulation 11 of the Regulations or regulation 11 of the NI Regulations, as the case may be";

(b) in Section 2 (physical characteristics of the certified copy of complementary certificate), in the first paragraph, omit "Community" and for "in accordance with Article 6(2) and 17 of Directive 2007/59/EC", substitute "in accordance with regulation 16(4) of the Regulations or regulation 16(3) of the NI Regulations, as the case may be";

(c) omit Section 4.

(13) In the heading to Annex IV, omit "Harmonised".

(14) In Annex IV—

(a) in Section 1 (general remarks)—

(i) in the first paragraph, for "Competent authorities", substitute "The ORR and the Department," and omit "harmonised",

(ii) in the second paragraph omit "harmonised",

(iii) in point (a) of the second paragraph, omit "harmonised" and for "section 3", substitute "section 2",

(iv) for point (b) of the second paragraph, substitute—

"(b) **A personal data protection statement.** The need to protect personal data must be reflected in the procedure for obtaining a licence. An example of a data protection statement is set out in section 3. The ORR or the Department, may adapt it to reflect the requirements of Data Protection Legislation.",

(v) in point (c) of the second paragraph, in the final sentence, for "5" substitute "4",

(vi) in point (d) of the second paragraph, for "and competent authorities" substitute ", the ORR and the Department";

(b) in Section 2 (application form)—

(i) omit "Harmonised" from the heading,

(ii) omit the EU flag symbol and the words "European model" below the symbol,

(iii) in the sub-heading under the main heading, for "in conformity with Directive 2007/59/EC and applicable national legislation", substitute "under regulation 10 of the Regulations or regulation 10 of the NI Regulations",

(iv) in field 2.6 for "European Identification Number (EIN) of licence. EIN not required for first issue", substitute "Licence Number (not required for first issue)";

(c) in Section 3 (examples of a data protection statement)—

(i) for the text in the heading to paragraph 3.1, substitute—

"**Example may be amended in line with Data Protection Legislation**",

(ii) in paragraph 3.1—

(aa) in the first sub-paragraph, for the first sentence, substitute—

"Any personal data, processed for the purpose of delivering train driving licences and to meet the requirement of the Regulations or the NI Regulations, must be processed in accordance with Data Protection Legislation.",

(bb) in both places where the words are used, for "competent authority/delegated entity", substitute "the ORR, the Department or the delegated body",

(iii) in paragraph 3.2, for "Directive 2007/59/EC", substitute "the Regulations or the NI Regulations";

(d) in Section 4 (list of documents to be appended to the application form for a train driving licence), at point 1.2, for "(Directive 95/46/EC)" substitute "(in accordance with Data Protection Legislation)";

(e) in Section 5 (guidance on the application form)—

(i) for point (a), substitute—

"(a) This application form must be incorporated into the ORR's and the Department's procedures for requesting a licence. The application must be accompanied by specific documents demonstrating that the applicant meets the requirements in regulation 8 of the Regulations or regulation 8 of the NI Regulations, as the case may be.",

(ii) for point (b), substitute—

"(b) The numbering system in the application form must be used.",

(iii) in point (d), omit "under the Directive",

(iv) for point (e), substitute—

"(e) Additional information may be required by the ORR or the Department where it is necessary to check personal identities. Any such data must be recorded in fields 2.24-2.26.",

(v) in the guidance on field 1.1, for "(National Safety Authorities, Railway Undertakings, or other contacting entities)", substitute " (the ORR, the Department, Railway Undertakings or other contacting entities)",

(vi) in the guidance on field 2.5, for "competent authority", substitute "ORR or the Department, as the case may be",

(vii) in the guidance on field 2.6, for "European Identification Number", substitute "Licence Number" and for "EIN number", substitute "Licence number",

(viii) in the guidance on field 2.19, for "distinguishing sign (two characters) of the country (see Annex I section 3)" substitute "UK",

(ix) in the guidance on field 2.20, for "shall be displayed (this information is optional under Directive 2007/59/EC)", substitute "(this information is optional)",

(x) in the guidance on field 2.21, for "competent authority", substitute "ORR or the Department",

(xi) in the guidance on field 2.22, omit "under Directive 2007/59/EC",

(xii) in the guidance on field 2.23, in the second paragraph, for the first sentence, substitute—

"The specifications for the quality of portraits, set out in Appendix 11 to Section IV of the ICAO document 9303 'Machine Readable Travel Documents' (ed. 2006)(**a**) apply.",

(xiii) for the guidance on fields 2.24, 2.25 and 2.26, for the text, substitute—

"(reserved for additional data)

These spaces are reserved for entries by ORR or the Department to enter any necessary information required under regulation 10 of the Regulations or regulation 10 of the NI Regulations, as the case may be. Personal identification numbers may be entered here.",

(xiv) for the guidance on field 2.27, substitute for the text—

"The candidate/driver who is the applicant must provide a signed declaration, either on paper or in electronic form, that the information provided in the application is true. The declaration will be subject to section 33(1)(k) of the Health and Safety at Work etc. 1974 Act(**b**), read with regulation 38 of the Regulations, where the licence is being applied for under the Regulations or article 31(1)(k) of the Health and Safety at Work (Northern Ireland) Order 1978(**c**), read with regulation 40 of the NI Regulations, where the licence is being applied for under those Regulations. The declaration may be adapted, if needed, to take account of any relevant law, including but not limited to laws regarding misrepresentation, falsification of documents, or fraud.",

(xv) in the guidance on field 2.29, for "Directive 1999/93/EC", substitute "Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC",

(xvi) in the guidance on field 2.30, for "Competent Authority", substitute "ORR or the Department",

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(**a**) ISBN 92-9194-753-9.
(**b**) 1974 c.37. There are amendments to section 33(1) but they are not relevant to these Regulations.
(**c**) S.I. 1978/1039 (N.I. 9) to which there are amendments not relevant to these Regulations.

(xvii) in the guidance on field 2.31, for "the deadline laid down in Article 14(4) of Directive 2007/59/EC", substitute "one month from the date on which the ORR or the Department, as the case may be, receives all the necessary documents",

(xviii) for paragraph 3 of the guidance (protection of personal data), substitute—

"3. **Protection of personal data**

3.1. The ORR or the Department, as the case may be, must ensure that the register required by regulation 24 of the Regulations or regulations 22 of the NI Regulations complies with Data Protection Legislation.

3.2. The data protection statement and authorisation to be signed by the applicant, set out in section 3 of this Annex, are only examples of possible arrangements. The ORR and the Department, as the case may be, may adapt the arrangements as needed to ensure compliance with Data Protection Legislation.",

(xix) in paragraph 4 of the guidance (section related to the supply of documents providing evidence)—

(aa) for paragraph 4.1, substitute—

"4.1. To obtain a new licence check box 1 in section 4 (list of documents to be appended to the application form for a train driving licence) and provide the documents listed at points 1.1 to 1.6 of section 4.

[1.2] Provide authorisation for the ORR or the Department, as the case may be, to process your personal data in accordance with Data Protection Legislation.

[1.3] The education requirements are set out in regulation 8(2)(b) and (c) of the Regulations or 8(1)(b) and (c) of the NI Regulations as the case may be.

[1.4] The physical requirements are set out in regulation 8(2)(d) of the Regulations or regulation 8(1)(d) of the NI Regulations, as the case may be.

[1.5] The psychological requirements are set out in regulation 8(2)(e) of the Regulations or regulation 8(1)(e) of the NI Regulations, as the case may be.

[1.6] The general professional competence requirements are set out in regulation 8(2)(f) of the Regulations or regulation 8(1)(f) of the NI Regulations, as the case may be.",

(bb) in paragraph 4.5, in the second sub-paragraph, for "competent authorities", substitute "ORR or the Department", and omit the final sentence.

Amendments to Commission Decision 2011/765/EU

5.—(1) Commission Decision of 22 November 2011 on criteria for the recognition of training centres involved in the training of train drivers, on criteria for the recognition of examiners of train drivers and on criteria for the organisation of examinations in accordance with Directive 2007/59/EC of the European Parliament and of the Council (2011/765/EU) is amended as follows.

(2) In Article 1—

(a) in the first paragraph, for "in accordance with Directive 2007/59/EC", substitute "for the purposes of the Regulations and the NI Regulations;

(b) in the second paragraph, in point (a), for "on training tasks specified in Article 23 of Directive 2007/59/EC", substitute "on training referred to in regulation 29 of the Regulations or regulation 28 of the NI Regulations, as the case may be";

(c) in the second paragraph, in point (b), for the words from "authorised" to the end, substitute "designated pursuant to regulation 31(1)(b) or (2)(b) of the Regulations or regulation 31(1)(b) or (2)(b) of the NI Regulations, as the case may be".

(3) In Article 2—

(a) in point (a), for the words from "training tasks referred to in Article 23(5)" to the end, substitute "training referred to in regulation 29 of the Regulations or regulation 28 of the

NI Regulations, as the case may be, including a single person applying for designation as an examiner pursuant to regulation 31(1)(b) or (2)(b) of the Regulations or regulation 31(1)(b) or (2)(b) of the NI Regulations";

(b) in points (c) and (d), for "Directive 2007/59/EC", substitute "regulations 8(2)(f) and 9(2)(c) of the Regulations or regulations 8(1)(f) and 9(1)(c) of the NI Regulations, as the case may be";

(c) omit point (e),

(d) in point (f), for the words from "an authority" to the end, substitute "the ORR or the Department, as the case may be";

(e) omit point (g),

(f) at the end insert—

"(h) "the Department" means the Department for Infrastructure renamed as such by the Departments Act (Northern Ireland) 2016 and originally established as the Department for Regional Development by article 3(1) of the Departments (Northern Ireland) Order 1999;

(i) "complementary certificate" or "certificate", when used in Articles 4, 5, 8 and 9 means a train driving certificate issued under the Regulations or the NI Regulations;

(j) "the NI Regulations" means the Train Driving Licences and Certificates (Northern Ireland) Regulations 2010;

(k) "the ORR" means the Office of Rail and Road;

(k) "train driver licence" means a train driving licence issued under the Regulations or the NI Regulations;

(l) "the Regulations" means the Train Driving Licences and Certificates Regulations 2010.".

(4) In Article 3, omit the final sentence.

(5) In Article 4—

(a) in paragraph 1, for "Directive 2007/59/EC", substitute "the Regulations or the NI Regulations, as the case may be";

(b) in paragraph 2—

(i) in point (a), for "Directive 2007/59/EC", substitute "the Regulations or the NI Regulations, as the case may be",

(ii) in point (c), for "Article 4(2)(e) of Directive 2007/59/EC", substitute "regulation 4(7)(e) and (8) of the Regulations or regulation 4(6)(e) and (7) of the NI Regulations, as the case may be",

(iii) in point (f), for "Directive 2007/59/EC", substitute "the Regulations or the NI Regulations, as the case may be";

(c) in paragraph 3, for "A Member State", substitute "The ORR or the Department";

(d) in paragraph 4, for "competent authority of the Member State", substitute "the ORR or the Department depending on".

(6) In Article 5(1)—

(a) for "A Member State", substitute "The ORR or the Department, as the case may be,";

(b) for "Directive 2004/49/EC of the European Parliament and of the Council", substitute "the Railways and Other Guided Transport Systems (Safety) Regulations 2006 or the Railways (Safety Management) Regulations (Northern Ireland) 2006 as the case may be.".

(7) Omit Article 6.

(8) In Article 7, in the second paragraph, for "competent authority", substitute "ORR or the Department as the case may be".

(9) In Article 8—

(a) in paragraph 2, in the first sub-paragraph, for "Article 4(2)(e) of Directive 2007/59/EC", substitute "regulation 4(7)(e) and (8) of the Regulations or regulation 4(6)(e) and (7) of the NI Regulations, as the case may be";

(b) in paragraph 4, for "A Member State", substitute "The ORR or the Department".

(10) In Article 9—

(a) for "Article 25 of Directive 2007/59/EC", substitute "regulation 31 of the Regulations or regulation 31 of the NI Regulations, as the case may be,";

(b) in point (b), for "Article 4(2)(e) of Directive 2007/59/EC", substitute "regulation 4(7)(e) and (8) of the Regulations or regulation 4(6)(e) and (7) of the NI Regulations, as the case may be";

(c) in point (c), for "Annexes to Directive 2007/59/EC", substitute "Schedules 3, 4 and 5 to the Regulations or Schedules 3, 4 and 5 to the NI Regulations, as the case may be".

(11) Omit Article 10.

(12) In Article 11—

(a) for "a Member State", substitute "the ORR or the Department, as the case may be,";

(b) in point (a), for "Directive 2004/49/EC", substitute "the Railways and Other Guided Transport Systems (Safety) Regulations 2006 or the Railways (Safety Management) Regulations (Northern Ireland) 2006".

(13) Omit Articles 12 and 13.

Signed by authority of the Secretary of State for Transport

Name
Parliamentary Under Secretary of State
Date Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

Part 2 of these Regulations (which extends to England and Wales and Scotland only) amends the Train Driving Licences and Certificates Regulations 2010 ("the 2010 Regulations") (S.I. 2010/724) to deal with deficiencies. The 2010 Regulations implemented, for Great Britain, 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 European Union (O.J. No. L 315, 3.12.2007, p.51). The 2010 Regulations established a regime for the licensing and certification of train drivers who drive trains on the mainline railway network. Railway undertakings and infrastructure managers are not to deploy a person to drive a train on that network unless the person is the holder of both a licence and a certificate. The licence is recognised by other European Member States and indicates satisfaction of medical checks and possession of general professional competence. The certificate indicates the infrastructure on which the holder is authorised to drive and the rolling stock which the holder is authorised to drive. Licences are issued by by the Office of Rail and Road and certificates are issued by railway undertakings and infrastructure managers.

Part 3 of these Regulations (which extends to Northern Ireland as well as to England, Wales and Scotland) also amends three pieces of EU tertiary legislation which are directly applicable in the

UK, and which on exit day become retained EU law in accordance with section 3 of the Withdrawal Act.

Regulation 3 amends the Commission Decision of 29 October 2009 on the adoption of basic parameters for registers of train driving licences and complementary certificates provided for under Directive 2007/59/EC of the European Parliament and of the Council (2020/17/EC) (O.J. No. L 8, 13.1.2010, p.17). This Commission Decision sets out the information that should be included in the national register of train driving licences required to be kept by the ORR (for Great Britain) and the Department for Infrastructure (for Northern Ireland) and in the register for train driving certificates kept by railway undertakings and infrastructure managers. The Commission Decision also sets out who is permitted to access the information on such registers.

Regulation 4 amends Commission Regulation (EU) No 36/2010 on Community models for train driving licences, complementary certificates, certified copies of complementary certificates and application forms for train driving licences under Directive 2007/59/EC of the European Parliament and the Council (O.J. No. L 13, 19.1.2010, p.1). This Commission Regulation sets out the template for the train driving licences and certificates to be issued to the train drivers and the information that needs to be included in each of the fields.

Regulation 5 amends Commission Decision of 22 November 2011 on criteria for the recognition of training centres involved in the training of train drivers, on criteria for the recognition of examiners of train drivers and on criteria for the organisation of examinations in accordance with Directive 2007/59/EC of the European Parliament and of the Council (2011/765/EU) (O.J. No. L 314, 29.11.2011, p.36). This Commission Decision sets out the criteria for examiners and training centres providing training and examinations of train drivers.

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

An Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk

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