EXPLANATORY MEMORANDUM TO

THE RAILWAYS AND OTHER GUIDED TRANSPORT SYSTEMS (SAFETY) (AMENDMENT) REGULATIONS 2015

2015 No. 1917

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2015 ("the Regulations") implement for Great Britain, European Commission Directive 2014/88/EU amending Directive 2004/49/EC of the European Parliament and of the Council as regards common safety indicators and common methods of calculating accident costs[1] ("the CSI Directive"). The CSI Directive makes minor and technical amendments to the definition of some of the common safety indicators ("CSIs") and to the related methodology to calculate the economic costs of accidents by amending Annex I to Directive 2004/49/EC of the European Parliament and of the Council on safety on the Community's railways[2] ("the Railway Safety Directive").

2.2 CSIs are harmonised statistics collected by all European Union Member States to provide an overview of safety performance and monitor the development of safety across the single European Railway Area.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Railway Safety Directive was implemented in Great Britain by the Railways and Other Guided Transport Systems (Safety) Regulations 2006[3] ("ROGS") and the Railways (Access to Training Services) Regulation 2006[4]. It was also transposed for the United Kingdom through the Railways (Accident Investigation and Reporting) Regulations 2005[5].

[1] O.J. No. L201 of 10.07.2014, p.9
[2] O.J. No. L164, 30.4.2004, p44
[3] S.I. 2006/599
[4] S.I. 2006/598
[5] S.I. 2005/1992

4.2 The Regulations amend regulation 20(1)(c) of ROGS by replacing the reference to Schedule 3 of ROGS with a reference to Annex I to the Railway Safety Directive as amended by the CSI Directive. Consolidated texts of EU legislation which show changes made by successive legislation amending the original EU legislation can be found at http://eur-lex.europa.eu/collection/eu-law/consleg.html. The Railway Safety Directive (with Annex 1 as implemented by the CSI Directive) can be found at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02004L0049-20140730&qid=1446642002683&from=EN The Office of Rail and Road also provides an overview of the regulatory requirements for managing safety on the railways on its web site (at http://orr.gov.uk/what-and-how-we-regulate/health-and-safety/regulation-and-certification/rogs). These pages set out who needs to comply and summarises what they need to do to meet minimum standards in Great Britain and across the European Union. They also provide updates on any changes to ROGS.

4.3 A transposition note sets out the approach taken to transpose the requirements of the CSI Directive.

4.4 The proposal that resulted in Directive 2004/49/EC was the subject of Explanatory Memorandum (EM) 5721/02, 5723/02, 5724/02, 5726/02, 5727/02 and 5744/02 submitted on 5 March 2002.

4.5 The House of Commons European Scrutiny Committee considered the EM at their meeting on 20th February 2002, found it to be of legal and political importance and recommended it for debate in Standing Committee A (Report 22, Session 2001-02, references 23192, 23202, 23193, 23194, 23195, and 23191). It was debated and cleared from scrutiny on 8th May 2002. The Minister wrote to the Chairman on 11th November 2002, 11th March 2003, 25th November 2003 and 24th March 2004 with an update on negotiations.

4.6 The House of Lords Select Committee on the European Union referred the EM to its sub Committee B on 19th March 2002 (1096th sift). The Chairman wrote to the Minister on 27th March 2002 requesting the results of the consultation. The Minister wrote to the Chairman on 17th October 2002, 11th November 2002, 31st December 2002, 11th March 2003, 9th April 2003, 25th November 2003 and 24th March 2004 with further information and an update on negotiations.

4.7 Directives 2009/149 and 2014/88 are both Commission Directives and were therefore not subject to Parliamentary Scrutiny.

4.8 This instrument applies to Great Britain.

4.9 Responsibility for railways in Northern Ireland is devolved to the Northern Ireland Assembly and is administered by the Department for Regional Development (Northern Ireland) which will implement the requirements of the CSI Directive.

4.10 For the Channel Tunnel, the Railway Safety Directive is implemented by the Channel Tunnel (Safety) Order 2007 (S.I. 2007/3531) ("the 2007 Order") as amended by the Channel Tunnel (Safety) (Amendment) Order 2013 (S.I. 2013/407) ("the 2013 Order"). The 2007 Order as amended by the 2013 Order gives legal effect to a Regulation of the Intergovernmental Commission[6] on the safety of the Channel

[6] The Intergovernmental Commission was established by Article 10 of the Treaty of Canterbury of 1986 to supervise, in the name and on behalf of the governments of the United Kingdom of Great Britain and Northern Ireland and of the French Republic, all matters concerning the construction and operation of the Channel

Tunnel. The Regulation which is set out in the Schedule to the 2007 Order as so amended includes a definition of CSIs by reference to Annex 1 of the Railways Safety Directives "as such annex is amended from time to time". Accordingly, the CSI Directive already has effect in relation to the Channel Tunnel without a need for further implementation.

5. Extent and Territorial Application

5.1 This instrument extends to Great Britain.

5.2 This instrument applies to Great Britain.

5.3 Responsibility for railways in Northern Ireland is devolved to the Northern Ireland Assembly and is administered by the Department for Regional Development (Northern Ireland) which will implement the requirements of the CSI Directive.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The CSI Directive, which was published in the Official Journal of the European Union on 10 July 2014, amends the Railway Safety Directive which established a common framework for the regulation and management of railway safety.

7.2 The Railway Safety Directive requires all European Union Member States to collect information on CSIs. This is to facilitate the achievement of common safety targets across the EU and to enable the development of safety in different Member States to be monitored. CSIs are based on common definitions and calculation methods contained in Annex I of the Railway Safety Directive and cover, for example, significant accidents, deaths and serious injuries and suicides as well as technical information such as number and type of level crossings. CSI data is publicly available through publication in the annual reports of national safety authorities and via the European Railway Agency's annual safety performance reports[7].

7.3 The CSI Directive reflects a small number of minor and technical amendments to these requirements which were proposed by an expert working group in light of operational experience and to provide additional clarity to the existing requirements. The principal changes are:

- the replacement of "unauthorised persons on railway premises" by "trespasser";
- the category "other" (killed and seriously injured persons) has been separated into "other person at a platform" and "other person not at a platform";
- the CSI relating to suicides now includes attempted as well as actual suicides;

Tunnel. Safety regulation is a key part of Intergovernmental Commission's responsibility to supervise and monitor all matters relating to the operation of the Channel Tunnel.

[7] http://www.era.europa.eu/Core-Activities/Safety/Safety-Performance/Pages/Safety-Performance-Report.aspx

- two, rather than one, categories of Signal Passed At Danger will be reported – when the train stops before getting beyond the danger point and when the train passed or met the danger point;

- the choice, for national safety authorities, to report on the economic impact of all accidents or just "significant" accidents has been removed;

- when calculating the costs of casualties, fatalities and serious injuries are to be considered separately and fatalities and serious injuries now have a different Value of Preventing a Casualty;

- for indicators relating to the technical safety or infrastructure, the categories of level crossing have been reduced from 8 to 5; and

- the reference to "indicators related to the management of safety" has been deleted.

7.4 It is expected that the implementation of these new criteria will lead to even greater accuracy of reporting across the European Union. As part of its comprehensive risk management and continuous improvement processes, the UK railway industry already records a significant amount of additional granularity beyond the requirements of the CSIs. This information is included in the Rail Safety and Standards Board's annual safety performance reports and monthly performance summaries[8].

Consolidation

7.5 The Regulations make minor and technical amendments to ROGS, which has already been amended on a number of occasions, but there are currently no plans for consolidation. However, negotiations on a recast of the Railway Safety Directive are currently underway following the publication of the European Commission's proposals for changes in January 2013 as part of the "technical pillar" of the Fourth Railway Package[9]. The issue of consolidation will therefore be considered afresh when transposition of those measures is required.

8. Consultation outcome

8.1 Given the minor and highly technical nature of the amendments no public consultation has been undertaken on their transposition. However, UK stakeholders were represented on the expert working group which developed the original proposals and have been involved throughout the development of the final text of the CSI Directive.

9. Guidance

9.1 The Office of Rail and Road (the "ORR") publishes a guide to ROGS[10] which notes the requirements of the CSIs and that mainline operators must report against them in

[8] http://www.rssb.co.uk/risk-analysis-and-safety-reporting/safety-intelligence/safety-performance-reports
[9] http://ec.europa.eu/transport/modes/rail/packages/2013_en.htm

[10] http://orr.gov.uk/what-and-how-we-regulate/health-and-safety/regulation-and-certification/rogs

their annual reports. This has been reviewed in light of the requirements of the CSI Directive and ORR has confirmed that no amendments are necessary as the reporting requirements set out in the guide and against which operators expect to report already reflect the CSI requirements as amended by the CSI Directive.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies as the UK railway industry already records a significant amount of additional granularity beyond the requirements of the CSIs and therefore the CSI reporting requirements as amended by the CSI Directive are already being complied with by the GB railway industry.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

12.1 ROGS already contains provisions requiring the Secretary of State to undertake a five yearly statutory review of its provisions which was inserted by the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011[11]. The first review is due by 26 August 2016 and the ORR, in its role as the independent railway safety regulator, has already begun to seek stakeholder comments on the effectiveness of ROGS. Its consultation paper (see http://orr.gov.uk/consultations/policy-consultations/closed-consultations/closed-consultations-2015/request-for-stakeholders-views-on-rogs) was published on 21 August with a request for comments by 13 October 2015. Any feedback will inform the results of the review. The Secretary of State is required to publish a report setting out the conclusions of the review.

12.2 The amendments made to ROGS by these Regulations will be reviewed under the terms of the existing statutory review provision.

13. Contact

13.1 Chris Angell at the Department for Transport Telephone: 020 7944 0082 or e-mail: christopher.angell@dft.gsi.gov.uk can answer any queries regarding this instrument.

[11] S.I. 2011/1860