

*This Statutory Instrument has in part been made in consequence of defects in S.I. 2019/837, S.I. 2019/825, S.I. 2019/518 and S.I. 2019/345 and is being issued free of charge to all known recipients of those Statutory Instruments.*

*Regulations made by the Secretary of State, laid before Parliament under paragraph 5(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament within 28 days beginning with the day on which the Regulations were made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.*

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STATUTORY INSTRUMENTS

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**2019 No. 1310**

**EXITING THE EUROPEAN UNION**

**HEALTH AND SAFETY**

**TRANSPORT**

**The Railways (Safety, Access, Management and Interoperability) (Miscellaneous Amendments and Transitional Provision) (EU Exit) Regulations 2019**

*Made - - - - at 12.06 p.m. on 7th October 2019*

*Laid before Parliament at 16.00 p.m. on 7th October 2019*

*Coming into force in accordance with regulation 1(2)*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(b).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to railways and railway transport(c).

The Secretary of State is of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament.

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(a) 1972 c. 68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(b) 2018 c. 16

(c) S.I. 1996/266, to which there are amendments not relevant to these Regulations.

# PART 1

## Introduction

### Citation and commencement

1.—(1) These Regulations may be cited as the Railways (Safety, Access, Management and Interoperability) (Miscellaneous Amendments and Transitional Provision) (EU Exit) Regulations 2019.

(2) These Regulations come into force as follows—

- (a) Part 1 comes into force the day after the day on which these Regulations are made;
- (b) regulations 3 and 4 come into force on the 21st day after the day on which these Regulations are made;
- (c) regulations 5 to 8 and Schedules 1 and 2 come into force immediately before exit day;
- (d) the remaining provisions come into force on exit day.

### Extent

2.—(1) These Regulations extend as follows.

(2) This Part, regulations 5, 6, 9, 10, 13 and Schedule 3 extend to Great Britain and Northern Ireland.

(3) Regulations 3, 7(1) to (4) and (8), 11 and Schedule 1 extend to Great Britain only.

(4) Regulations 4, 7(5) to (7), 8, 12 and Schedule 2 extend to Northern Ireland only.

# PART 2

## Amendments to subordinate legislation

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

3.—(1) The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016(a) are amended as follows.

(2) In regulation 6 (access to services), after paragraph (13), insert—

“(14) Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017(b) on access to service facilities and rail-related services sets out details of the procedure and criteria to be followed for access to the services and service facilities referred to in paragraphs 2, 3 and 4 of Schedule 2.”

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

4.—(1) The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016(c) are amended as follows.

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(a) S.I. 2016/645, amended by S.I. 2019/82 and S.I. 2019/518; SI 2019/518, with the exception of regulations 9(a), 13(b) and (c) and 21(b), which implement permitted derogations under European legislation, is not yet in force.  
(b) OJ No. L 307, 23.11.2017, p. 1.  
(c) S.R. 2016 No. 420, amended by S. R. 2019 No. 15; prospectively amended by S.I. 2019/826.

(2) In regulation 5 (access to services), for paragraph (13), substitute—

“(13) Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017<sup>(a)</sup> on access to service facilities and rail-related services sets out details of the procedure and criteria to be followed for access to the services and service facilities referred to in paragraphs 2, 3 and 4 of Schedule 2.”.

#### **Amendments to the Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019**

**5.**—(1) The Railways (Access, Management and Licensing of Railway Undertakings) (Amendments etc.) (EU Exit) Regulations 2019<sup>(b)</sup> are amended as follows.

(2) In regulation 25 (revocation of retained EU law), omit paragraph (b).

(3) In regulation 41 (Commission Implementing Regulation (EU) No 869/2014 of 11 August 2014 on new rail passenger services), sub-paragraph (c)(ii), at the end, insert “and for “their decision” substitute “its decision””.

(4) In regulation 68 (Commission Implementing Regulation (EU) 2016/545 of 7 April 2016 on procedures and criteria concerning framework agreements for the allocation of rail infrastructure capacity), in sub-paragraph (a)(i), for “regulation 23(4) to (10), (9) and (10) of the 2016 GB Regulations” substitute “regulation 23(1) to (3), (9) and (10) of the 2016 GB Regulations”.

(5) For regulation 82 (Commission Implementing Regulation (EU) 2018/1795 of 20 November 2018 laying down procedure and criteria for the application of the economic equilibrium test pursuant to Article 11 of Directive 2012/34/EU of the European Parliament and of the Council) substitute—

“**82.** In Article 9 (procedure for the economic equilibrium test), before “point 3 of Annex VII to Directive 2012/34/EU” in each place it occurs, insert “paragraph 3 of Schedule 4 to the 2016 GB Regulations or, in Northern Ireland.”.

#### **Amendments to the Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019**

**6.**—(1) The Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019<sup>(c)</sup> are amended as follows.

(2) In regulation 2 (amendments to the Railways (Interoperability) Regulations 2011)—

(a) in paragraph (13)(c), in the new paragraph 9(b), for “after” substitute “on or after”;

(b) in paragraph (27), in the new regulation 23—

(i) in paragraph (2)(a), after “before” insert “, on”;

(ii) in paragraph (4), for “after exit day” substitute “on or after exit day”.

#### **Amendments to the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019**

**7.**—(1) The Rail Safety (Amendment etc.) (EU Exit) Regulations 2019<sup>(d)</sup> are amended as follows.

(2) In regulation 3 (amendments to the Railways and Other Guided Transport Systems (Safety) Regulations 2006<sup>(e)</sup>)—

(a) after paragraph (2), insert

“(2A) In regulation 7 (safety certificate)—

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(a) OJ L 307, 23.11.2017, p. 1.

(b) S.I. 2019/518.

(c) S.I. 2019/345.

(d) S.I. 2019/837.

(e) S.I. 2006/599; relevant amendments are made by S.I. 2007/3531, 2013/950 and 2015/1682 and prospective amendments by S.I. 2019/837.

(i) in paragraph (2), at the beginning, insert “Subject to paragraph 2A,”

(ii) after paragraph (2), insert—

“(2A) Where in accordance with paragraphs (1) and (2) of this regulation, the applicant has at any time before, on or after exit day submitted a copy of the certificate referred to in paragraph 1(b)(i)(bb) of Schedule 2, that certificate shall cease to be deemed to be Part A of the safety certificate after the second anniversary of exit day and no such certificate submitted after that anniversary shall be deemed to be Part A of the safety certificate.”

(b) in paragraph (11), in the new paragraph 1(b)(i), in sub-paragraph (bb), after “member State” insert “before exit day.”

(3) Omit regulation 14 (amendments to Commission Regulation (EU) No 1077/2012 on a common safety method for supervision by national safety authorities after issuing a safety certificate or safety authorisation).

(4) In regulation 16 (amendments to Commission Implementing Regulation (EU) No 402/2013 on the common safety method for risk evaluation and assessment and repealing Regulation (EC) No 352/2009)—

(a) for paragraph (3)(c) substitute—

“(c) in paragraph 4—

(i) for “TSIs” substitute “NTSNs”;

(ii) for the second sentence substitute “If such contradictions occur, the proposer shall inform the Secretary of State who may then decide to publish a variation of the NTSN in accordance with paragraphs (3) and (4) of regulation 3B of the Railways (Interoperability) Regulations 2011(a) or issue an exemption in accordance with regulation 14 of those Regulations.”;

(b) in paragraph (4), in the substituted Article 3 (definitions)—

(i) after the definition of ‘actors’, insert—

“‘approved body’ has the meaning provided in regulation 2 of the Railways (Interoperability) Regulations 2011;”;

(ii) after the definition of ‘critical accident’, insert—

“‘designated body’ has the meaning provided in regulation 2 of the Railways (Interoperability) Regulations 2011;”;

(iii) after the definition of ‘entity in charge of maintenance’, insert—

“‘EU notified body’ has the meaning provided in regulation 2 of the Railways (Interoperability) Regulations 2011;”;

(iv) after the definition of ‘national accreditation body’, insert—

“‘national rule’ means NTRs as defined in regulation 2 of the Railways (Interoperability) Regulations 2011 and national safety rules as defined in regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

‘NTSN’ has the meaning provided in regulation 2 of the Railways (Interoperability) Regulations 2011;”;

(v) omit the definition of ‘notified bodies’;

(vi) omit the definition of ‘notified national rule’;

(vii) in the definition of ‘proposer’, for paragraph (c) substitute—

“(c) a contracting entity or manufacturer which invites—

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(a) S.I. 2011/3066; prospectively amended by S.I. 2019/345; there are other amending instruments but none is relevant.

- (i) an approved body or a designated body to apply the UK verification assessment procedure in accordance with regulation 17 of and Schedule 4 to the Railways (Interoperability) Regulations 2011; or
  - (ii) an EU notified body to apply the EC verification procedure in accordance with Directive 2008/57/EC or a designated body according to Article 17(3) of that Directive;”;
- (viii) omit the definition of ‘technical specification for interoperability’ (‘TSI’);
- (c) in paragraph (7)—
  - (i) for paragraph (c), substitute—
    - “(c) in paragraph 3(b), for “a notified body as defined by Article 2(j) of Directive 2008/57/EC or a body designated in accordance with Article 17 of that Directive” substitute “an EU notified body or an approved body”.”;
  - (ii) for paragraph (j) substitute—
    - “(j) in the final paragraph—
      - (i) omit “as referred to in Article 15(1) or Article 20 of Directive 2008/57/EC”;
      - (ii) for “a notified body in accordance with Article 18(2) of that Directive”, substitute “an approved body”.”;
- (d) in paragraph (9)—
  - (i) for paragraph (a) substitute—
    - “(a) in paragraph 1—
      - (i) for “Commission Regulation (EU) No 1158/2010 or Commission Regulation (EU) No 1169” substitute “regulation 7 or 10 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006, or Chapter 3 of the Schedule to the Channel Tunnel (Safety) (Amendment) Order 2013”;
      - (ii) for “by a Member State in accordance with Article 7” substitute “in Northern Ireland”.”;
    - (ii) for paragraph (b)(ii) substitute—
      - “(ii) for “by a Member State”, substitute “in Northern Ireland”.”;
- (e) for paragraph (13) substitute—
  - “(13) In Article 15 (safety assessment reports)—
    - (a) in paragraph 3, for “Without prejudice to Article 16 of Directive 2008/57/EC, the” substitute “The”;
    - (b) in paragraph 4—
      - (i) for “In the case referred to in point (a) of Article 2(3)” substitute “Where the application of this Regulation or part of this Regulation is required by a relevant NTSN”;
      - (ii) for “notified body” substitute “approved body”.”;
- (f) in paragraph (17), for “last two sentences” substitute “last sentence”;
- (g) in paragraph (18)—
  - (i) after sub-paragraph (a), insert—
    - “(aa) in point 1.1.4(b)—
      - (i) for “a TSI” substitute “an NTSN”;
      - (ii) for “notified national rules” substitute “national rules”.”;
  - (ii) after sub-paragraph (b), insert—
    - “(bb) in point 1.2.1, for “TSIs” substitute “NTSNs”;
    - (bc) in point 1.2.6, for “notified national rule” substitute “national rule”.”;
  - (iii) for sub-paragraph (c), substitute—

- “(c) in point 2.3.3—
  - (i) for “TSIs”, in both places it occurs, substitute “NTSNs”;
  - (ii) omit “by Directive 2008/57/EC”;
  - (iii) for “TSI” substitute “NTSN”;
- (iv) after sub-paragraph (c), insert—
  - “(cc) in point 2.3.4, omit “notified in accordance with Article 8 of Directive 2004/49/EC and Article 17(3) of Directive 2008/57/EC”;
- (v) for sub-paragraph (e), substitute—
  - “(e) in point 2.5.2, for—
    - (i) for “Union legislation” substitute “legislation applying in Great Britain”;
    - (ii) “notified national rules”, substitute “national rules”;
- (vi) after sub-paragraph (f), insert—
  - “(ff) in point 2.5.5, for “definition (23) and definition (35)” substitute “catastrophic accident or critical accident”.

(5) In regulation 17 (amendments to Commission Regulation (EU) No 1158/2010 on a common safety method for assessing conformity with the requirements for obtaining railway safety certificates), in paragraph (7)(b), for “Schedule 8” substitute “Schedule 6”.

(6) Omit regulation 19 (amendments to Commission Regulation (EU) 1077/2012 on a common safety method for supervision by national safety authorities after issuing a safety certificate or safety authorisation).

(7) In regulation 21 (amendments to Commission Implementing Regulation (EU) No 402/2013 on the common safety method for risk evaluation and assessment and repealing Regulation (EC) No 352/2009)—

- (a) for paragraph (3)(c) substitute—
  - “(c) in paragraph 4—
    - (i) for “TSIs” substitute “NTSNs”;
    - (ii) for the second sentence substitute “If such contradictions occur, the proposer shall inform the Secretary of State, who may then decide to publish a variation of the NTSN in accordance with paragraphs (3) and (4) of regulation 3B of the Railways (Interoperability) Regulations 2011, and the Department for Infrastructure(a), who may then decide to issue an exemption in accordance with regulation 14 of those Regulations.”;
- (b) in paragraph (4), in the substituted Article 3 (definitions)—
  - (i) after the definition of ‘actors’, insert—
    - “‘approved body’ has the meaning provided in regulation 2 of the Railways (Interoperability) Regulations 2011;”;
  - (ii) after the definition of ‘critical accident’, insert—
    - “‘designated body’ has the meaning provided in regulation 2 of the Railways (Interoperability) Regulations 2011;”;
  - (iii) after the definition of ‘entity in charge of maintenance’, insert—
    - “‘EU notified body’ has the meaning provided in regulation 2 of the Railways (Interoperability) Regulations 2011;”;
  - (iv) after the definition of ‘national accreditation body’, insert—

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(a) The Department for Infrastructure was originally established as the Department for Regional Development by article 3(1) of the Departments (Northern Ireland) Order 1999 (S.I. 1999/283) and subsequently renamed by section 1(6) of the Departments Act (Northern Ireland) 2016 (c.5).

- “national rule’ means NTRs as defined in regulation 2 of the Railways (Interoperability) Regulations 2011 and national safety rules as defined in regulation 2 of the Railways (Safety Management) Regulations (Northern Ireland) 2006(a);”;
- (v) omit the definition of ‘notified bodies’;
  - (vi) omit the definition of ‘notified national rule’;
  - (vii) in the definition of ‘proposer’, for paragraph (c) substitute—
    - “(c) a contracting entity or manufacturer which invites—
      - (i) an approved body or a designated body to apply the UK verification assessment procedure in accordance with regulation 17 of and Schedule 4 to the Railways (Interoperability) Regulations 2011; or
      - (ii) an EU notified body to apply the EC verification procedure in accordance with Directive 2008/57/EC or a designated body according to Article 17(3) of that Directive;”;
  - (viii) omit the definition of ‘technical specification for interoperability’ (“TSI”);
  - (c) in paragraph (7)—
    - (i) for paragraph (c) substitute—
      - “(c) in paragraph 3(b), “for a notified body as defined by Article 2(j) of Directive 2008/57/EC or a body designated in accordance with Article 17 of that Directive”, substitute “an EU notified body or an approved body”;”;
    - (ii) for paragraph (j) substitute—
      - “(j) in the final paragraph—
        - (i) omit “as referred to in Article 15(1) or Article 20 of Directive 2008/57/EC”;
        - (ii) for “a notified body in accordance with Article 18(2) of that Directive”, substitute “an approved body”.”;
  - (d) in paragraph (9)—
    - (i) for paragraph (a) substitute—
      - “(a) in paragraph 1—
        - (i) for “Commission Regulation (EU) No 1158/2010 or Commission Regulation (EU) No 1169” substitute “regulation 5 or 8 of the Railways (Safety Management) Regulations (Northern Ireland) 2006”;
        - (ii) for “by a Member State in accordance with Article 7” substitute “in Great Britain”;
      - (ii) for paragraph (b)(ii) substitute—
        - “(ii) for “by a Member State”, substitute “in Great Britain”;”;
  - (e) for paragraph (13) substitute—
    - “(13) In Article 15 (safety assessment reports)—
      - (a) in paragraph 3 for “Without prejudice to Article 16 of Directive 2008/57/EC, the”, substitute “The”;
      - (b) in paragraph 4—
        - (i) for “In the case referred to in point (a) of Article 2(3)” substitute “Where the application of this Regulation or part of this Regulation is required by a relevant NTSN”;
        - (ii) for “notified body” substitute “approved body”;”;
  - (f) in paragraph (17), for “last two sentences” substitute “last sentence”;
  - (g) in paragraph (18)—

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(a) S.R. 2006 No. 237, prospectively amended by S.I. 2019/825; there are other amending instruments but none is relevant.

- (i) after sub-paragraph (a), insert—
    - “(aa) in point 1.1.4(b)—
      - (i) for “a TSI” substitute “an NTSN”;
      - (ii) for “notified national rules” substitute “national rules”;;
  - (ii) after sub-paragraph (b), insert—
    - “(bb) in point 1.2.1, for “TSIs” substitute “NTSNs”;
    - (bc) in point 1.2.6, for “notified national rule” substitute “national rule”;;
  - (iii) for sub-paragraph (c), substitute—
    - “(c) in point 2.3.3—
      - (i) for “TSIs”, in both places it occurs substitute “NTSNs”;
      - (ii) omit “by Directive 2008/57/EC”;
      - (iii) for “TSI” substitute “NTSN”;;
  - (iv) after sub-paragraph (c), insert—
    - “(cc) in point 2.3.4, omit “notified in accordance with Article 8 of Directive 2004/49/EC and Article 17(3) of Directive 2008/57/EC”;;
  - (v) for sub-paragraph (e), substitute—
    - “(e) in point 2.5.2—
      - (i) for “Union legislation” substitute “legislation applying in Northern Ireland”;
      - (ii) for “notified national rules” substitute “national rules”;;
  - (vi) after sub-paragraph (f), insert—
    - “(ff)in point 2.5.5, for “definition (23) and definition (35)” substitute “catastrophic accident or critical accident”.”.
- (8) In the Schedule—
- (a) in the new Schedule 10 (system of certification of entities in charge of maintenance in respect of Great Britain) to the Railways and Other Guided Transport Systems (Safety) Regulations 2006, in paragraph 31, for “TSIs”, in each place it occurs, substitute “NTSNs”;
  - (b) the new Schedule 11 (common safety targets) to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 is amended in the manner set out in Schedule 1 to these Regulations.

**Amendments to the Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019**

**8.**—(1) The Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019(a) are amended as follows

(2) In the Schedule (schedules to be inserted in the Railways (Safety Management) Regulations (Northern Ireland) 2006), the new Schedule 7 to the Railways (Safety Management) Regulations (Northern Ireland) 2006 is amended in the manner set out in Schedule 2 to these Regulations.

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(a) S.I. 2019/825.



## PART 3

### Amendments to retained direct EU legislation

#### **Amendments to Commission Implementing Regulation (EU) No 869/2014 on new rail passenger services**

**9.** In Commission Implementing Regulation (EU) No 869/2014 of 11 August 2014 on new rail passenger services, in Article 18 (fees), for “Member States or, where appropriate, regulatory bodies” substitute “The Office of Rail and Road”(a).

#### **Amendment to Commission Implementing Regulation (EU) 2017/2177 on access to service facilities and rail-related services**

**10.**—(1) Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services is amended as follows.

(2) In Article 1 (subject matter)—

- (a) for “points 2, 3 and 4 of Annex II to Directive 2012/34” substitute “paragraphs 2, 3 and 4 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraphs 2, 3 and 4 of Schedule 1 to the 2016 NI Regulations”;
- (b) after “railway undertakings”, in the first place it occurs, insert “and any other entities who are entitled to request access to service facilities and rail related services”;
- (c) omit the third sentence.

(3) In Article 2 (exemptions)—

- (a) in paragraphs 1 and 4, for “regulatory body”, substitute “Office of Rail and Road”;
- (b) in paragraphs 2, 3 and 5, for “Regulatory bodies” substitute “The Office of Rail and Road”;
- (c) in paragraph 3, for “their website” substitute “its website”.

(4) In Article 3 (definitions)—

- (a) in point (1), for “point 2 of Annex II to Directive 2012/34/EU” substitute “paragraph 2 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2 of Schedule 1 to the 2016 NI Regulations”;
- (b) in point (2), for “points 2, 3 and 4 of Annex II to Directive 2012/34” substitute “paragraphs 2, 3 and 4 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraphs 2, 3 and 4 of Schedule 1 to the 2016 NI Regulations”;
- (c) in point (7), for “national railway transport services markets” substitute “railway transport services markets in the United Kingdom”;
- (d) in point (10), for “Article 48(1) of Directive 2012/34/EU” substitute regulation 24(1) of the 2016 GB Regulations or, as the case may be, regulation 24(1) of the 2016 NI Regulations”;
- (e) after point (11) insert—

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(a) The Office of Rail and Road was established by section 15 of the Railways and Transport Safety Act 2003 (c. 20) as the Office of Rail Regulation and subsequently renamed by the Office of Rail Regulation (Change of Name) Regulations (S.I. 2015/1682).

“(12) ‘2016 GB Regulations’ means the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016;(a)

(13) ‘2016 NI Regulations’ means the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2016.(b)”.

(5) In Article 5 (publication of service facility description)—

(a) in paragraph 1, for “Article 2(3) or (4) of Directive 2012/34/EU” substitute “regulation 4(6) and (7) of the 2016 GB Regulations or, as the case may be, regulation 3(6) and (7) of the 2016 NI Regulations”;

(b) in paragraph 2—

(i) for “Article 27(4) of Directive 2012/34/EU” substitute “regulation 13(9) of the 2016 GB Regulations or, as the case may be, regulation 13(9) of the 2016 NI Regulations”;

(ii) for “regulatory bodies” substitute “the Office of Rail and Road”;

(c) in paragraph 4, for “regulatory body” substitute “Office of Rail and Road”.

(6) In Article 6 (additional information)—

(a) in paragraph 1, for “regulatory body” substitute “Office of Rail and Road”;

(b) in paragraph 2, for “points 2(a) to (g) of Annex II to Directive 2012/34/EU” substitute “paragraph 2(b) to (i) of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2(b) to (h) of Schedule 1 to the 2016 NI Regulations”.

(7) In Article 7—

(a) in paragraph 1, for “point 2 of Annex II to Directive 2012/34/EU” substitute “paragraph 2 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2 of Schedule 1 to the 2016 NI Regulations”;

(b) in paragraph 2—

(i) for “point 2 of Annex II to Directive 2012/34/EU” substitute, in both places the words occur, “paragraph 2 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2 of Schedule 1 to the 2016 NI Regulations”;

(ii) for “points 3 and 4 of Annex II to Directive 2012/34” substitute “paragraphs 3 and 4 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraphs 3 and 4 of Schedule 1 to the 2016 NI Regulations”;

(c) in paragraph 4, for “regulatory body” substitute “Office of Rail and Road”.

(8) In Article 9 (response to requests)—

(a) in paragraph 1—

(i) for “point 2 of Annex II to Directive 2012/34/EU” substitute “paragraph 2 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2 of Schedule 1 to the 2016 NI Regulations”;

(ii) for “regulatory body” substitute “Office of Rail and Road”;

(iii) for “Article 13(4) of Directive 2012/34/EU” substitute “regulation 6(3) of the 2016 GB Regulations or, as the case may be, regulation 5(3) of the 2016 NI Regulations”;

(b) in paragraph 3—

(i) for “Regulatory bodies” substitute “The Office of Rail and Road”;

(ii) for “Article 13(4) of Directive 2012/34/EU” substitute “regulation 6(3) of the 2016 GB Regulations or, as the case may be, regulation 5(3) of the 2016 NI Regulations”;

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(a) S.I. 2016/645, amended by S.I. 2019/82 and prospectively amended by S.I. 2019/518.

(b) S.R. 2016 No. 429, amended by SR 2016 No. 15 and prospectively amended by S.I. 2019/826.

- (iii) for “Article 27(4) of Directive 2012/34/EU” substitute “regulation 13(9) of the 2016 GB Regulations or, as the case may be, regulation 13(9) of the 2016 NI Regulations”;
- (c) in paragraph 4—
  - (i) for “points (a) to (d) and (f) to (i) of point 2 of Annex II”, in both places the words occur, substitute “paragraph 2(a) to (f) and (h) to (j) of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2(a) to (f), (h) and (i) of Schedule 1 to the 2016 NI Regulations”;
  - (ii) for “Article 13(4) of Directive 2012/34/EU” substitute “regulation 6(3) of the 2016 GB Regulations or, as the case may be, regulation 5(3) of the 2016 NI Regulations”;
  - (iii) for “regulatory bodies” in the first place it occurs, substitute “the Office of Rail and Road”;
  - (iv) for “Where regulatory bodies have” substitute “Where the Office of Rail and Road has”;
  - (v) for “Article 48(1) of Directive 2012/34/EU”, and for “Article 48(1) of the Directive”, substitute “regulation 24(2) of the 2016 GB Regulations or, as the case may be, regulation 24(2) of the 2016 NI Regulations”;
  - (vi) for “regulatory body” substitute “Office of Rail and Road”;
  - (vii) for “point (e) of point 2 of Annex II” substitute “paragraph 2(g) of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2(g) of Schedule 1 to the 2016 NI Regulations”;
- (d) in paragraph 5—
  - (i) for “points 3 and 4 of Annex II to Directive 2012/34” substitute “paragraphs 3 and 4 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraphs 3 and 4 of Schedule 1 to the 2016 NI Regulations”;
  - (ii) for “regulatory body” substitute “Office of Rail and Road”;
  - (iii) for “points 3 and 4 of Annex II” substitute “paragraphs 3 and 4 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraphs 3 and 4 of Schedule 1 to the 2016 NI Regulations”;
  - (iv) for “point (e) of point 4 of Annex II” substitute “paragraph 4(e) of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 4(e) of Schedule 1 to the 2016 NI Regulations”.
- (9) In Article 10 (coordination procedure)—
  - (a) in paragraph 1—
    - (i) for “point 2 of Annex II to Directive 2012/34/EU” substitute “paragraph 2 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2 of Schedule 1 to the 2016 NI Regulations”;
    - (ii) for “points 3 and 4 of Annex II to Directive 2012/34” substitute “paragraphs 3 and 4 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraphs 3 and 4 of Schedule 1 to the 2016 NI Regulations”;
  - (b) in paragraph 2, for “point 2 of Annex II to Directive 2012/34/EU” substitute “paragraph 2 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2 of Schedule 1 to the 2016 NI Regulations”;
  - (c) in paragraph 4, for “regulatory body” substitute “Office of Rail and Road”;
  - (d) in paragraph 5—
    - (i) for “point 2 of Annex II to Directive 2012/34/EU” substitute “paragraph 2 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2 of Schedule 1 to the 2016 NI Regulations”;
    - (ii) for “regulatory body” substitute “Office of Rail and Road”.
- (10) In Article 12 (viable alternatives)—

- (a) in paragraph 1—
    - (i) for “point 2 of Annex II to Directive 2012/34/EU” substitute “paragraph 2 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2 of Schedule 1 to the 2016 NI Regulations”;
    - (ii) for “regulatory body”, in the first place it occurs, substitute “Office of Rail and Road”;
    - (iii) omit the second sentence;
  - (b) in paragraph 2, for “point 2 of Annex II to Directive 2012/34/EU” substitute “paragraph 2 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2 of Schedule 1 to the 2016 NI Regulations”;
  - (c) in paragraph 3 for “in other Member States” substitute “in locations outside the United Kingdom”.
- (11) In Article 13 (refusal of access)—
- (a) in paragraph 1—
    - (i) for “point 2 of Annex II to Directive 2012/34/EU” substitute “paragraph 2 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2 of Schedule 1 to the 2016 NI Regulations”;
    - (ii) for “regulatory body” substitute “Office of Rail and Road”;
    - (iii) for “Article 13(5) of Directive 2012/34/EU” substitute “regulation 32 of the 2016 GB Regulations or, as the case may be, regulation 32 of the 2016 NI Regulations”;
  - (b) in paragraph 3, for “Article 13(3) of Directive 2012/34/EU” substitute “regulation 10(2) the 2016 GB Regulations or, as the case may be, regulation 10(2) of the 2016 NI Regulations”;
  - (c) in paragraph 4, for “regulatory body” substitute “Office of Rail and Road”.
- (12) In Article 14 (complaints)—
- (a) for “the regulatory body” substitute “the Office of Rail and Road”;
  - (b) for “Article 13(5) of Directive 2012/34/EU” substitute “regulation 32 of the 2016 GB Regulations or, as the case may be, regulation 32 of the 2016 NI Regulations”;
  - (c) for “that regulatory body” substitute “the Office of Rail and Road”;
  - (d) for “in other Member States” substitute “in locations outside the United Kingdom”.
- (13) In Article 15 (unused facilities)—
- (a) in paragraph 3—
    - (i) for “point 2 of Annex II to Directive 2012/34/EU” substitute “paragraph 2 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2 of Schedule 1 to the 2016 NI Regulations”;
    - (ii) for “regulatory body” substitute “Office of Rail and Road”;
  - (b) in paragraph 6, for “regulatory body”, in both places it occurs, substitute “Office of Rail and Road”;
  - (c) in paragraph 7—
    - (i) for “point 2 of Annex II to Directive 2012/34/EU” substitute “paragraph 2 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2 of Schedule 1 to the 2016 NI Regulations”;
    - (ii) for “regulatory body” substitute “Office of Rail and Road”;
  - (d) in paragraph 9, for “point 2 of Annex II to Directive 2012/34/EU” substitute “paragraph 2 of Schedule 2 to the 2016 GB Regulations or, as the case may be, paragraph 2 of Schedule 1 to the 2016 NI Regulations”;
  - (e) in paragraph 10—

- (i) for the first sentence substitute “Procedures for the regulatory control of decommissioning of service facilities which existed prior to the coming into force of this Regulation may continue to be used”;
- (ii) for “regulatory body” substitute “Office of Rail and Road”.

(14) Omit Article 16 (review).

(15) After Article 17 (entry into force), omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

**Amendments to Commission Delegated Regulation (EU) 2018/761 establishing common safety methods for supervision by national safety authorities after the issue of a single safety certificate or a safety authorisation pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 1077/2012 in respect of Great Britain**

**11.**—(1) Commission Delegated Regulation (EU) 2018/761 of 16 February 2018 establishing common safety methods for supervision by national safety authorities after the issue of a single safety certificate or a safety authorisation pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 1077/2012 is amended as follows in respect of Great Britain.

(2) In Article 1 (subject matter), omit “referred to in point (c) of Article 6(1) of Directive (EU) 2016/798”.

(3) In Article 2 (definition)—

(a) omit point (a);

(b) after point (b) insert—

“(c) ‘national safety authority’ means one or both of—

(i) a safety authority; or

(ii) the safety authority for the tunnel system

as defined in regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006.”.

(4) In Article 3 (supervision process), for paragraph 3, substitute—

“3. For the purposes of supervision, the national safety authorities shall accept the authorisations, recognitions or certificates of products or services provided by railway undertakings and infrastructure managers, or their contractors, partners or suppliers, if granted or recognised in accordance with relevant legislation applying in any part of the United Kingdom on or after exit day, as proof of the ability of railway undertakings and infrastructure managers to fulfil any corresponding safety management system requirements set out in regulations 3(1)(a) and 5(1) to (3) of the Railways and Other Guided Transport Systems (Safety) Regulations 2006.”.

(5) After Article 10 (entry into force and application) omit “This Regulation shall be binding in its entirety and directly applicable in all Member States”.

(6) In Annex I—

(a) in paragraph 5—

(i) before “The national safety authority shall” insert subparagraph number 1;

(ii) in new subparagraph 1, at points (b) and (c), for “Member State” substitute “geographical area of responsibility” and, at point (e), omit “Agency acting as”;

(iii) after the new subparagraph 1, insert—

“2. For the purposes of subparagraph (1)(e), “safety certification body” means the European Union Agency for Railways<sup>(a)</sup> acting as a body responsible for issuing a single safety certificate under Article 10 of Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (recast)<sup>(b)</sup> and “national safety authority” includes a safety authority established in a member State of the European Union under Article 16 of that Directive.”;

(b) in paragraph 6—

(i) in the introductory words, for “Member State” substitute “a national”;

(ii) in subparagraph (c), for “its Member State” substitute “the Secretary of State”.

(7) Schedule 3 has effect.

**Amendments to Commission Delegated Regulation (EU) 2018/761 establishing common safety methods for supervision by national safety authorities after the issue of a single safety certificate or a safety authorisation pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 1077/2012 in respect of Northern Ireland**

**12.**—(1) Commission Delegated Regulation (EU) 2018/761 of 16 February 2018 establishing common safety methods for supervision by national safety authorities after the issue of a single safety certificate or a safety authorisation pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 1077/2012 is amended as follows in respect of Northern Ireland.

(2) In Article 1 (subject matter) omit “referred to in point (c) of Article 6(1) of Directive (EU) 2016/798”.

(3) In Article 2 (definition)—

(a) omit point (a);

(b) after point (b), insert—

“(c) ‘national safety authority’ has the meaning provided for “safety authority” in regulation 2 of the Railways (Safety Management) Regulations (Northern Ireland) 2006.”.

(4) In Article 3 (supervision process), for paragraph 3, substitute—

“3. For the purposes of supervision, the national safety authorities shall accept the authorisations, recognitions or certificates of products or services provided by railway undertakings and infrastructure managers, or their contractors, partners or suppliers, if granted or recognised in accordance with relevant legislation applying in any part of the United Kingdom on or after exit day, as proof of the ability of railway undertakings and infrastructure managers to fulfil any corresponding safety management system requirements set out in regulations 3(1)(a) and 4(1) to (3) of the Railways (Safety Management) Regulations (Northern Ireland) 2006.”.

(5) After Article 10, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

(6) In Annex I—

(a) in paragraph 5—

(i) before “The national safety authority shall” insert subparagraph number 1;

(ii) in the new subparagraph 1, at points (b) and (c), for “Member State” substitute “geographical area of responsibility” and, at point (e), omit “Agency acting as”;

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(a) The European Union Agency for Railways is established under Article 1 of Regulation (EU) 2016/796 of the European Union and of the Parliament of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 (O.J. No. L138, 26.5.2016, p1).

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

(iii) after the new subparagraph 1, insert—

“2. For the purposes of subparagraph 1(e), “safety certification body” means the European Union Agency for Railways acting as a body responsible for issuing a single safety certificate under Article 10 of Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (recast) and “national safety authority” includes a safety authority established in a member State of the European Union under Article 16 of that Directive.”;

(b) in paragraph 6—

(i) in the introductory words, for “Member State” substitute “a national”;

(ii) in subparagraph (c), for “its Member State” substitute “the Department for Infrastructure in Northern Ireland”.

(7) Schedule 3 has effect.

**Amendment to Commission Implementing Regulation 2018/1795 laying down procedure and criteria for the application of the economic equilibrium test pursuant to Article 11 of Directive 2012/34/EU of the European Parliament and of the Council**

13. In Commission Implementing Regulation (EU) 2018/1795 of 20 November 2018 laying down procedure and criteria for the application of the economic equilibrium test pursuant to Article 11 of Directive 2012/34/EU of the European Parliament and of the Council, in Article 13 (fees), omit the words “A Member State or”.

Signed by authority of the Secretary of State for Transport

*Chris Heaton-Harris*  
Minister of State  
Department for Transport

At 12.06 p.m. on 7th October 2019

**SCHEDULE 1**

Regulation 7(8)(b)

**Amendments to the Schedule to the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019**

1. In the Schedule to the Rail Safety (Amendment etc.) (EU Exit) Regulations 2006, the new Schedule 11 (common safety targets) to be inserted into the Railways and Other Guided Transport Systems (Safety) Regulations 2006 is amended as follows.

2. In paragraph 14, in the first column of the table—

(a) for “Passengers” substitute “Risks to passengers”;

(b) for “Employees” substitute “Risks to staff or employees, including the staff of contractors”;

(c) for “Level crossing users” substitute “Risks to level crossing users”;

(d) for “Others” substitute “Risks to others”;

(e) for “Unauthorised persons on railway premises” substitute “Risks to unauthorised persons on railway premises”;

(f) for “Whole society” substitute “Risk to society as a whole”.

3. In paragraph 16, in the second column of the table—

- (a) for “Risk to employees” substitute “Risks to staff or employees, including the staff of contractors”;
- (b) for “Risk to persons classified as others” substitute “Risks to others”;
- (c) for “Societal risk” substitute “Risk to society as a whole”.

4. In paragraph 17, for the words “Risk to employees” in the first column of the table, substitute “Risks to staff or employees, including the staff of contractors”.

## SCHEDULE 2

Regulation 8(2)

### Amendments to Schedule to the Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019

1. In the Schedule to the Railways (Safety Management) (Amendment) (EU Exit) Regulations (Northern Ireland) 2019, the new Schedule 7 (common safety targets) to be inserted into the Railways (Safety Management) Regulations (Northern Ireland) 2006 is amended as follows.

2. In paragraph 2, for the definition of “risk to whole”, substitute—

““risk to society as a whole” means the collective risk to all categories of persons listed in Article 7(4)(a) of the Directive;”.

3. In paragraph 14, in the first column of the table—

- (a) for “Passengers” substitute “Risks to passengers”;
- (b) for “Employees” substitute “Risks to staff or employees, including the staff of contractors”;
- (c) for “Level crossing users” substitute “Risks to level crossing users”;
- (d) for “Others” substitute “Risks to others”;
- (e) for “Unauthorised persons on railway premises” substitute “Risks to unauthorised persons on railway premises”;
- (f) for “Whole society” substitute “Risk to society as a whole”.

4. In paragraph 16, in the second column of the table—

- (a) for “Risks to employees” substitute “Risks to staff or employees, including the staff of contractors”;
- (b) for “Risks to persons classified as others” substitute “Risks to others”;
- (c) for “Societal risk” substitute “Risk to society as a whole”.

5. In paragraph 17, for the words “Risk to employees” in the first column of the table, substitute “Risks to staff or employees, including the staff of contractors”.

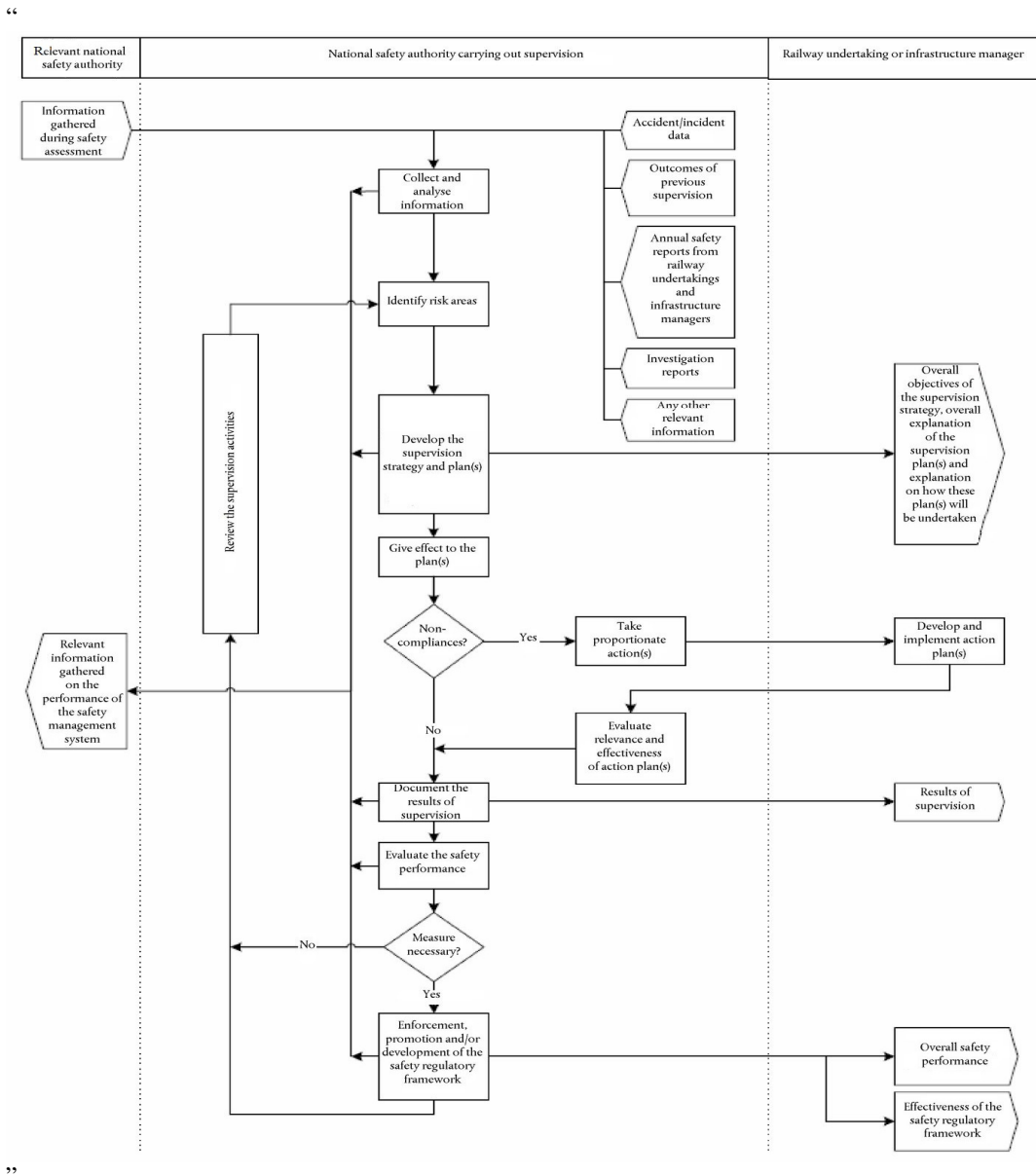


SCHEDULE 3

Regulations 11(7), 12(7)

Flowchart to be inserted into Commission Delegated Regulation (EU) 2018/761

For the flowchart in the Appendix to Annex I of Commission Delegated Regulation (EU) 2018/761 establishing common safety methods for supervision by national safety authorities after the issue of a single safety certificate or a safety authorisation pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 1077/2012, substitute the following flowchart.



## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (c) and (g)) arising from the withdrawal of the UK from the European Union, and in exercise of powers conferred by section 2(2) of the European Communities Act 1972 (in respect of regulations 3 and 4).

These Regulations make amendments to legislation in the field of railway safety, access and management, including in relation to common safety targets, supervision of railway undertakings and infrastructure managers by safety authorities, risk evaluation and assessment, access to service facilities and rail-related services, and fees. Part 2 amends subordinate legislation, and Part 3 amends retained direct EU legislation.

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 has been produced for this instrument and is published alongside this instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk)

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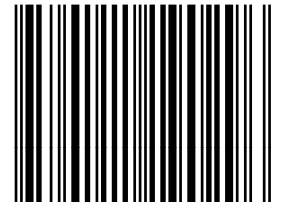


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