



Leaving the EU without a deal and the effects for EU passenger and freight licences and SNRPs

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

28 March 2019

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Introduction

The UK's withdrawal from the European Union

On 29 March 2017, the United Kingdom notified the European Council of its intention to withdraw from the European Union (EU) and the European Union (Withdrawal) Act 2018 came into force on the 26 June 2018. The result is that from Exit Day, EU legislation will no longer apply directly in the UK and arrangements have been made to ensure a smooth transition, as explained in more detail below.

The majority of legislation applicable to Great Britain's railways is either EU legislation that is directly applicable in the UK or domestic regulations that transposed EU directives.

This document describes the changes to the licensing regime for passenger and freight railway undertakings and in particular to the *Railway (Licensing of Railway Undertakings) Regulation 2005* (the 2005 Regulations) and associated EU legislation that are required to ensure that there continues to be a regime to support the licensing system for railway undertakings (generally speaking, the operators of train services on the mainline railway) beyond Exit Day.

ORR will amend its March 2016 licensing guidance on how to apply for operator licences and licence exemptions as soon as possible after Exit Day. Until we do so, the relevant aspects of that guidance should be considered in conjunction with this document.

Affected legislation

2. In Great Britain, the provisions of EU legislation on the licensing of railway undertakings are implemented by several regulations, namely:
 - *The Railways (Licensing of Railway Undertakings) Regulation 2005*; and
 - *The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016* (as amended).
3. As explained below, these regulations will remain in force after Exit Day, subject to amendments made by the *Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019* to prevent, remedy or mitigate any deficiencies arising as a result of the withdrawal of the UK from the EU e.g. replacing references to “other EU Member States” or to decision-making roles for EU institutions with an appropriate equivalent reference.

The Railways (Licensing of Railway Undertakings) Regulations 2005

4. *The Railways (Licensing of Railway Undertakings) Regulations 2005* (hereinafter “the 2005 Regulations”) define the regime for licensing the operators of passenger and freight trains on the mainline railway in Great Britain.
5. The 2005 Regulations are domestic law that will be amended and will continue to have effect in Great Britain beyond Exit Day, subject to amendments made by the *Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019*¹ to prevent, remedy or mitigate any deficiencies arising as a result of the withdrawal of the UK from the EU.

Commission Implementing Regulation (EU) 2015/171

6. This regulation relates to certain aspects of the procedure of licensing railway undertakings, such as the requirement for a common licence template, aspects pertaining to information requirements on civil liability or insurance cover and certain aspects of the procedure for granting a licence. The regulation will cease to have effect in Great Britain beyond Exit Day: it will be revoked by the *Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019*, which will come into force on Exit Day.

¹ Available at <http://www.legislation.gov.uk/ukdsi/2019/9780111179291/body>

Changes after Exit Day

The European Union (Withdrawal) Act 2018 (The Withdrawal Act)

7. The Withdrawal Act provides for EU-derived domestic legislation (such as the 2005 Regulations) that has effect before Exit Day to continue to have effect in UK law. It does not permit EU legislation that is in force before Exit Day to be modified other than the amendments necessary to prevent, remedy or mitigate any deficiencies arising as a result of the withdrawal of the UK from the EU.

Railway undertakings and licensing legislation

8. There are **no substantive changes** to the requirements on railway undertakings when applying for or holding an operating licence. After Exit Day, each passenger and freight railway undertaking will still be required to have a licence in order to operate trains on the mainline railway.
9. There will be minor changes to the format of new licences issued to railway undertakings (and the corresponding application form) to reflect that these are not EU documents.

Actions required by railway undertakings

10. European licences and their associated statements of national regulatory provisions (“SNRPs”) issued by ORR will continue to be valid for operations in Great Britain. No action is necessary.
11. However, **current European licences and SNRPs issued by ORR will no longer be valid for train operations in the EU**. Any railway undertakings that rely on such documents will need to replace them with the new licences issued by an EU licensing authority if they wish to operate in the EU after Exit Day. In the case of operators who only operate into the EU no further than Calais-Fréthun in France or Dundalk in Ireland, the EU has provided for UK-issued licences to remain valid in that limited cross-border area for a period of nine months following Exit Day. Such licences must be replaced with EU documentation as soon as possible and well before that nine month period expires.
12. Existing European licences issued by a licensing authority in the EU (not by ORR), will remain valid in Great Britain for a period of two years following Exit Day or until they expire (whichever is sooner). Upon expiry, holders of EU-issued licences will need to apply to ORR for the necessary licence to operate in Great Britain.

13. Applicants for new, updated or renewed railway undertaking licences after Exit Day will need to ensure their applications refer to and comply with the domestic legislation in force at the time.

Changes to EU legislation after Exit Day

14. If any changes are made to EU legislation after Exit Day these will not be automatically transposed into UK legislation, nor will they have direct effect. Subsequent implementation will be a matter for the relevant ministers and parliament to decide on a case-by-case basis whether or not to implement new or amended EU legislation in full or in part.

Mutual recognition of European operator licences

15. The UK position is to recognise EU documentation including European licences for a period of two years after Exit Day (unless they expire sooner).
16. This recognition has not yet been reciprocated by the EU and unless specific agreements are put in place with EU Member States to preserve recognition, European licences – i.e. those issued in Great Britain to operators of passenger and freight train services – will cease to be valid in the EU from Exit Day. The exception is in the immediate area of our border with the EU, where licences will be recognised for a limited period of nine months following Exit Day, as explained at paragraph 11.
17. It is the responsibility of the licence/SNRP holder to ensure they hold the necessary documentation to comply with the relevant legislation.



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