



Leaving the EU without a deal and the effects on train driving licences

Changes to the Train Driving
Licences and Certificates
Regulations 2010

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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 Train Driving Licences and Certificates Regulations 2010 (TDLCR) and associated EU legislation that are required to ensure that there continues to be a regime to support the train driver licensing and certification system for the mainline railway beyond Exit Day.

ORR will amend its suite of guidance on the train driver licensing and certification regime 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

Directive 2007/59/EC on the certification of train drivers operating locomotives and trains on the railway system in the Community (The Train Driving Directive)

1. The Train Driving Directive is the overarching EU legislation that establishes the framework for train driving licences and certificates. It sets out the obligations of the Member States, National Safety Authorities, railway undertakings, infrastructure managers and train drivers in relation to the licensing and certification of train drivers.
2. The Train Driving Directive does not have direct effect in the UK so it must be implemented through domestic legislation. In Great Britain the Train Driving Directive is implemented by the Train Driving Licences and Certificates Regulations 2010 (TDLCR).
3. As explained below, the legislation transposing the Train Driving Directive will remain in force after Exit Day, subject to amendments made by the Train Driving Licences and Certificates (Amendment) (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 Train Driving Licences and Certificates Regulations 2010 (TDLCR)

4. TDLCR is the main implementing regulation for the Train Driving Directive in Great Britain and it defines the regime for train driving licences and certificates on the mainline railway.
5. TDLCR is domestic law which will continue to have effect in Great Britain.
6. TDLCR will be amended and will continue to have effect in Great Britain beyond Exit Day subject to amendments made by the Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019 to prevent, remedy or mitigate any deficiencies arising as a result of the withdrawal of the UK from the EU.

Commission Decision 2010/17/EC (registers of train driving licences and certificates)

7. This decision relates to the adoption of the basic parameters for registers of train driving licences and certificates and will be incorporated into domestic law under the Withdrawal Act.
8. This decision will be amended and will continue to have effect in the UK beyond Exit Day subject to amendments made by the Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019 to prevent, remedy or mitigate any deficiencies arising as a result of the withdrawal of the UK from the EU.

Commission Regulation (EU) No. 36/2010 (models for licences, certificates, certified copies of certificates and application forms for licences)

9. This regulation relates to the EU models for the licences, certificates, certified copies of the certificates and application forms for licences under the Train Driving Directive. It sets out the template for train driving licences and certificates and the type of information to be included in each field.
10. The regulation will be incorporated in domestic law under the Withdrawal Act subject to amendments made by the Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019 to prevent, remedy or mitigate any deficiencies arising as a result of the withdrawal of the UK from the EU.

Commission Decision 2011/765/EU (criteria for recognition of training centres and examiners)

11. This decision relates to the adoption of criteria for the recognition of training centres involved in train driver training, the criteria for the recognition of examiners of train drivers, and the criteria for the organisation of examinations in accordance with the Train Driving Directive.
12. The decision will be incorporated in domestic law under the Withdrawal Act subject to amendments made by the Train Driving Licences and Certificates (Amendment) (EU Exit) Regulations 2019 to prevent, remedy or mitigate any deficiencies arising as a result of the withdrawal of the UK from the EU.

Changes after Exit Day

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

13. The Withdrawal Act provides for EU-derived domestic legislation (such as TDLCR) that has effect before Exit Day to continue to have effect in UK law. It also provides for direct EU legislation (such as those decisions and regulations listed in paragraphs 7 – 12) that was operative immediately before Exit Day to form part of domestic law.
14. The Withdrawal Act 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. Nor does the Withdrawal Act allow for legislation to be amended to impose requirements that were not in force before Exit Day. This means that, in relation to train driver licensing, the Withdrawal Act cannot be used to:
 - Make substantive policy changes – for example, we cannot change the competence and fitness requirements for holding a licence; or
 - Introduce new EU requirements that are known to us but not yet in force – for example, the recent Commission decision relaxing language requirements for drivers in some limited circumstances.

Train driving licences and certificates legislation

15. There are no substantive changes to the scope of requirements to hold train driving licences and certificates or to the requirements duty holders must comply with. In particular, there are **no** changes to the requirement for train drivers to have a licence and certificate in order to drive trains on the mainline railway or any changes to the monitoring requirements on employers of train drivers.
16. There are minor changes to the format of train driving licences, certificates and to the licence application form to reflect that these are now UK rather than EU documents.
17. As explained in the ‘Affected legislation’ section of this document, from Exit Day, EU-derived legislation will continue to have effect in the UK and existing directly applicable EU legislation will be incorporated into domestic law. Both of these categories of legislation will be subject to amendments to prevent, remedy or mitigate any deficiencies arising as a result of the withdrawal of the UK from the EU and ensure it operates effectively beyond Exit Day.

Actions required by duty holders

18. Train driving licences issued by ORR and certificates issued by infrastructure managers or railway undertakings will continue to be valid in Great Britain and holders are not required to make any changes or to reapply. However, UK-issued licences will no longer be valid outside the UK and duty holders who rely on such documents in order to operate lawfully in the EU must replace them with the relevant EU documentation by Exit Day”
19. Existing train driving licences issued by other EU authorities will remain valid in the UK 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.
20. Applicants for new, updated or renewed train driving licences after Exit Day will need to ensure their applications refer to and comply with the domestic legislation in force at the time. This includes ensuring medical assessment, training and examination is carried out by persons recognised for the purpose in the UK.

Changes to EU legislation after Exit Day

21. 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 train driving licences

22. The UK position is to recognise EU documentation including train driving licences for a period of two years after Exit Day (unless they expire sooner). As such, train driving licences issued by safety authorities in EU member states before Exit Day will be recognised as valid for driving trains in the UK for two years after Exit Day (or until they expire, whichever is sooner).
23. 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, UK issued train driving licences will cease to be valid in the EU from Exit Day.
24. It is the responsibility of the duty holder to ensure they hold the necessary documentation to comply with the relevant legislation.



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