



## **Leaving the EU without a deal and the effect on railway safety regulation**

**Changes to the Railways and Other  
Guided Transport Systems (Safety)  
Regulations 2006, the Railways  
(Access to Training Services)  
Regulations 2006 and ECM  
Regulation**

**28 March 2019**

# Contents



<b>Introduction</b> .....	<b>3</b>
The UK's withdrawal from the European Union .....	3
<b>Affected legislation</b> .....	<b>4</b>
The European Railway Safety Directive (2004/49/EC) (The Safety Directive).....	4
The Railways (Access to Training Services) Regulations 2006.....	4
The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS) .....	5
The Common Safety Methods (CSMs).....	5
The Common Safety Targets (CSTs) .....	6
Entities in Charge of Maintenance Regulation (445/2011) .....	6
Overview.....	7
<b>Changes after Exit Day</b> .....	<b>8</b>
The European Union (Withdrawal) Act 2018 (The Withdrawal Act) .....	8
Railway safety legislation.....	8
Actions required by duty holders .....	9
Changes to EU legislation after Exit Day .....	9
<b>The Fourth Railway Package Technical Pillar (4RP)</b> .....	<b>10</b>
Description.....	10
Implementation .....	10
<b>Mutual recognition</b> .....	<b>11</b>

# 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 transpose EU directives. An overview of the structure of the regulations is provided on page 7.

This document describes the changes to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS), Railways (Access to Training Services) Regulation 2006, Entities in Charge of Maintenance Regulation 445/2011 and associated legislation that are required to ensure that there continues to be a regime to support the safe operation of Great Britain's railways beyond Exit Day.

ORR will amend its suite of guidance on these regulations 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

### The European Railway Safety Directive (2004/49/EC) (The Safety Directive)

1. The Safety Directive is the overarching EU legislation that establishes the framework for railway safety regulation. It sets out the obligations of member states, railway undertakings and infrastructure managers, defines the systems for managing safety and for giving companies authority to operate on the railway and it requires member states to investigate accidents and incidents.
2. The Safety Directive does not have direct effect in the UK so it must be implemented through domestic legislation. In Great Britain the Safety Directive is implemented through the Railways and Other Guided Transport Systems (Safety) Regulations 2006, Railways (Access to Training Service) Regulations 2006 and the Railways (Accident, Investigation and Reporting) Regulations (RAIR) regulations 2005. This guidance document focuses on the effects on the safety and access to training regulations.
3. As explained below, the legislation transposing the Safety Directive will remain in force after Exit Day, subject to amendments made by the Rail Safety (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 (Access to Training Services) Regulations 2006

4. These regulations implement the requirement in Article 13 of the Safety Directive for Member States to ensure that railway undertakings have fair and non discriminatory access to training services.
5. They are domestic law which will continue to have effect in Great Britain.
6. The regulations will be amended and will continue to have effect in Great Britain beyond Exit Day subject to amendments made by the Rail Safety (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.

## The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS)

7. ROGS is the main implementing regulation for the Safety Directive and it sets out the regime for railway safety including the mainline railway, metros (including London Underground), tramways, light rail and heritage railways.
8. ROGS is domestic law and has effect in Great Britain.
9. ROGS will be amended and will continue to have effect in Great Britain beyond Exit Day subject to amendments made by the Rail Safety (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.

## The Common Safety Methods (CSMs)

10. There are a suite of five CSM regulations which provide the methods for:
  - Assessing conformity with the requirements for obtaining a safety certificate
  - Assessing conformity with the requirements for obtaining a safety authorisation
  - Supervision of transport operators
  - Monitoring of the effectiveness of duty holders' safety management systems
  - Risk evaluation and assessment
11. The CSMs are EU Regulations and are directly applicable in the UK.
12. ROGS will be amended to ensure that the CSMs are incorporated into domestic law after Exit Day. Amendments will be made to the CSMs by the Rail Safety (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.
13. Newer versions of the CSMs which have been adopted by the EU pursuant to the 4th Railway Package (see below) but which are not due to come into force until after Exit Day will not be automatically implemented in the UK. Subsequent implementation will be a matter for the relevant ministers and parliament to decide on a case-by-case basis.

## **The Common Safety Targets (CSTs)**

14. The CSTs specify the level of safety that safety management systems must achieve through the use of the CSMs and the method for assessing the level of safety.
15. The CSTs and the assessment methods are an EU Decision that is currently directly applicable in the UK and will be incorporated into domestic law after Exit Day.
16. ROGS will be amended to include common safety targets and the methods for assessing the level of safety which are equivalent to the CSTs. The task of assessing whether the CSTs have been achieved will pass from the EU Agency for Railways to the ORR.

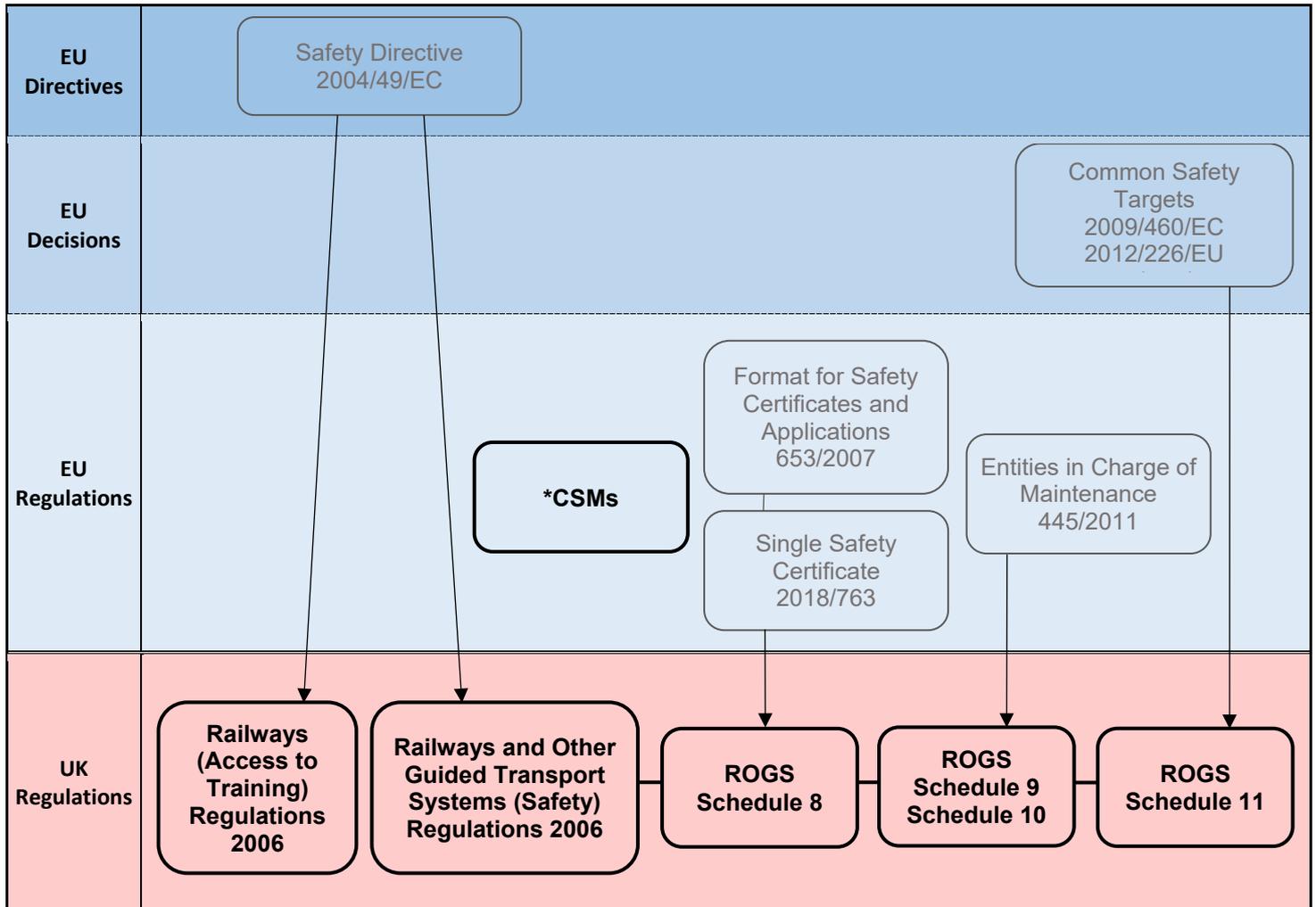
## **Entities in Charge of Maintenance Regulation (445/2011)**

17. The Entities in Charge of Maintenance (ECM) Regulation establishes a system of certification for ECMs of freight wagons.
18. The ECM Regulation is an EU Regulation that is directly applicable in the UK and will be incorporated into domestic law after Exit Day.
19. ROGS will be amended by Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 to establish a system for certifying ECMs of freight wagons which is equivalent to the ECM Regulation, subject to small amendments to prevent, remedy or mitigate any deficiencies arising as a result of the withdrawal of the UK from the EU. These requirements will appear as new Schedules 9 and 10 of ROGS.

## **Potential changes to the scope of ECM Regulation**

20. The EU Agency for Railways is proposing to extend the scope of the ECM certification scheme to all vehicles, not just freight wagons. This change to the EU Regulation is likely to take place after Exit Day therefore the extended certification scheme will not be implemented in the UK as a result of these amendments to ROGS.

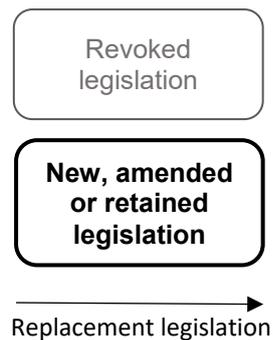
# Overview



\*CSMs = Common Safety Methods for:

- assessing conformity with the requirements for obtaining railway safety certificates (1158/2010)
- assessing conformity with the requirements for obtaining railway safety authorisation (1169/2010)
- supervision by national safety authorities after issuing a safety certificate or safety authorisation (1077/2012)
- monitoring to be applied by railway undertakings, infrastructure managers after receiving a safety certificate or safety authorisation and by entities in charge of maintenance (1078/2012)
- risk evaluation and assessment and repealing Regulation (EC) No 352/2009 (402/2013)

Key:



## Changes after Exit Day

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

21. The Withdrawal Act provides for EU-derived domestic legislation (such as ROGS) that has effect before Exit Day to continue to have effect in UK law. It also provides for direct EU legislation (such as the CSMs) that was operative immediately before Exit Day to form part of domestic law.
22. 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 the case of safety regulation, the Withdrawal Act cannot be used to:
  - Make substantive changes of policy – for example, removing the requirements on transport operators to make an annual safety report to ORR; or
  - Introduce new requirements that are known to us but not yet in force – for example, introducing the new common safety methods adopted by the EU in 2018 but which do not come into force until June 2019.

### Railway safety legislation

23. There are no substantive changes to the scope of railway safety legislation or the requirements duty holders must comply with. In particular, there are **no** changes to how safety management must be carried out and **no** changes to the requirements for obtaining and renewing a safety certificate or safety authorisation.
24. There are minor changes to the format of safety certificates and the related application form to reflect that this is now UK rather than EU documentation.
25. 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

26. Existing safety certificates, safety authorisations and ECM certificates issued by ORR (or, where applicable, by an ECM Certification Body) will continue to be valid and holders are not required to make any changes or reapply. However, these documents 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.
27. Existing safety certificates issued by other EU safety 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 such certificates will need to apply to ORR for the necessary certification. The Rail Safety (Amendment etc.) (EU Exit) Regulations 2019 provide for EU certificates to be recognised until expiry and do not impose the planned two-year limitation. At the time of writing, our understanding is that the Government intends to bring forward further amending legislation shortly after exit to impose this two-year limit on validity of EU-issued certificates.
28. Applicants for new, amended or further safety certification, authorisation or ECM certification 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

29. 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. It 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.

# The Fourth Railway Package Technical Pillar (4RP)

## Description

30. The 4RP Technical Pillar is a package of three legislative texts adopted by the EU in 2016 which will introduce new and amended legislation aimed at opening the market and reducing the cost and administrative burden of complying with regulation. More information about the 4RP Technical Pillar is available on the EU Agency for Railways' website: [https://ec.europa.eu/transport/modes/rail/packages/2013\\_en](https://ec.europa.eu/transport/modes/rail/packages/2013_en)
31. One of the legislative texts to be amended is the Safety Directive. ROGS is derived from the Safety Directive therefore ordinarily it would be necessary to amend ROGS to reflect the changes to the Safety Directive.

## Implementation

32. Member States are required to implement the 4RP Technical Pillar by 16 June 2019 which, at the time of publication, is **after** Exit Day. Therefore the changes the 4RP Technical Pillar introduces will **not** be required to be transposed in to UK legislation. In particular:
  - UK mainline train operators will continue to hold a separate Part A and Part B certificate and the single safety certificate will not be introduced.
  - UK operators will continue to apply for safety certificates or authorisations to ORR and will not be obliged to use the EU Agency for Railways' 'One Stop Shop'.
  - New Common Safety Methods and other EU Regulations adopted since 2016 concerning the process for single safety certification and the updated requirements of the safety management system will not be introduced.
33. It is possible that the 4RP Technical Pillar will be implemented, in full or in part, in the UK in the future but this will be a matter for the relevant ministers and parliament to decide.

## Mutual recognition

34. The UK position is to recognise EU documentation including safety certificates for a period of two years after Exit Day (unless they expire sooner).
35. 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 documents will cease to be valid in the EU from Exit Day.
36. In the specific case of ECMs, there will be two types of ECM Certificate valid in the UK:
  - A 'UK ECM certificate' issued in accordance with Schedule 11 of ROGS (after Exit Day)
  - An 'EU ECM certificate' issued in accordance with EU Regulation 445/2011 (before or after Exit Day)
37. EU ECM certificates will continue to be recognised in the UK after Exit Day.
38. EU Certification Bodies will be able to issue new UK ECM certificates after Exit Day only if they are recognised or accredited in the UK.
39. UK Certification Bodies will only be able to issue UK ECM certificates after Exit Day (unless they obtain recognition or accreditation in another EU Member State). However, these certificates should be recognised for use by other EU Member States because they comply with International (COTIF) standards.
40. 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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